IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 798

UNITED STATES OF AMERICA and
COMMISSIONER OF INTERNAL REVENUE,
Petitioners,

—v.—

ANNE GOYNE MITCHELL, FRANCES ANGELLO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

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GENERAL DOCKET

TAX COURT OF THE UNITED STATES

Docket No. 6740-66

ANNE GOYNE MITCHELL
505 South Vienna Street
Ruston, Louisiana
PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Date	*Filings and Proceedings*
Dec. 30, 1966	PETITION FILED: FEE PAID 12/30/66
Dec. 30, 1966	Request by Pet. for trial at New Orleans, La. GRANTED 1/3/67
Feb. 21, 1967	ANSWER filed by Resp.
May 24, 1967	MOTION by resp. for entry of order that undenied allegations in answer be deemed admitted.
May 29, 1967	NOTICE of filing of resp. motion for order under Rule 18 and hearing on June 28, 1967. (Reply due—6/15/67)
June 12, 1967	Reply filed by Petitioner.
June 13, 1967	ORDER, that respondent's motion filed May 24, 1967 is denied and this case is striken from the calendar for Motions Session on June 8, 1967, at Washington, D.C.
July 19, 1967	NOTICE OF TRIAL on October 3, 1967, at New Orleans, La.
Oct. 24, 1967	TRIAL at New Orleans, La. before Judge Forrester. Resp. Motion to consolidate Dkts. 6740-66 & 6741-66. No Obj. by Petr.: Filed, Granted & Served Oct. 24, 1967.

STIPULATION OF FACTS filed.

SUPPLEMENTAL STIPULATION OF FACTS filed.

ORIGINAL BRIEFS DUE—January 22, 1968

REPLY BRIEFS DUE—March 7, 1968

UNDER SUBMISSION—JUDGE FORRESTER

Oct. 30, 1967 TRANSCRIPT of Oct. 24, 1967 New Orleans, Louisiana

Oct. 30, 1967 TRANSCRIPT of hrg. Oct. 23, 1967, at New Orleans, La. rec'd

Jan. 16, 1968 MOTION by petr. to file Second Stipulation of Fact. "No objection resp." GRANTED Jan. 17, 1968. Second Supplemental Stipulation of Facts Lodged.

Jan. 17, 1968 Second Supplemental Stipulation of fact filed

Jan. 22, 1968 ORIGINAL BRIEF filed by petitioner.

Jan. 22, 1968 ORIGINAL BRIEF filed by respondent.

Mar. 7, 1968 REPLY BRIEF for Respondent filed

Mar. 8, 1968 REPLY BRIEF for Petitioner filed

Jan. 27, 1969 FINDINGS OF FACT AND OPINION filed, Judge Forrester. Decision will be entered under Rule 50.

Mar. 14, 1969 AGREED COMPUTATION filed

Mar. 19, 1969 DECISION ENTERED, Judge Forrester.

APPELLATE PROCEEDINGS

June 16, 1969 NOTICE OF APPEAL to U.S.C.A., 5th Cir., filed by Petr.

June 17, 1969 NOTICE OF FILING with copy of Notice of Appeal sent to Richard M. Hahn, Acting Chief Counsel.

June 17, 1969 NOTICE, to parties, of assembling and date for transmission of record.

GENERAL DOCKET

TAX COURT OF THE UNITED STATES

Docket No. 6741-66

JANE ISABELL GOYNE SIMS
6 Westwood Drive
Ruston, Louisiana
PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Date	*Filings and Proceedings*
Dec. 30, 1966	PETITION FILED: FEE PAID 12/30/66
Dec. 30, 1966	Request by Pet. for trial at New Orleans, La. GRANTED 1/3/67
Feb. 21, 1967	ANSWER filed by Resp.
May 24, 1967	MOTION by resp. for entry of order that undenied allegations in Answer be deemed admitted.
May 29, 1967	NOTICE of filing of resp. motion for order under Rule 18 and hearing on June 28, 1967. (Reply Due on or before June 15, 1967).
June 12, 1967	REPLY filed by Petitioner.
June 13, 1967	ORDER, that resp's. motion filed May 24, 1967 is denied and this case is stricken from the calendar for Motions Session on June 28, 1967, Washington, D.C.
July 19, 1967	NOTICE OF TRIAL on October 23, 1967, at New Orleans, La.
Oct. 24, 1967	TRIAL at New Orleans, La. before Judge Forrester.
	Resp. motion to consolidate Dkts. 6740-66 & 6741-66. No obj. by Petr.: Filed, Granted & Served Oct. 24, 1967.

STIPULATION OF FACTS filed.

SUPPLEMENTAL STIPULATION OF FACTS filed.

ORIGINAL BRIEFS DUE—January 22, 1968

REPLY BRIEFS DUE—March 7, 1968

UNDER SUBMISSION—JUDGE FORRESTER

Oct. 30, 1967 TRANSCRIPT of Oct. 24, 1967 New Orleans, Louisiana

Oct. 30, 1967 TRANSCRIPT of hrg. Oct. 23, 1967 at New Orleans, La. rec'd

Jan. 16, 1968 MOTION by petr. to file Second Stipulation of Fact. "No objection resp." GRANTED Jan. 17, 1968. Second Supplemental Stipulation of Facts Lodged.

Jan. 17, 1968 SECOND Supplemental Stipulation of fact filed

Jan. 22, 1968 ORIGINAL BRIEF filed by petitioner.

Jan. 22, 1968 ORIGINAL BRIEF filed by respondent.

Mar. 7, 1968 REPLY BRIEF for Respondent filed

Mar. 8, 1968 REPLY BRIEF for Petr. filed

Jan. 27, 1969 FINDINGS OF FACT AND OPINION filed, Judge Forrester. Decision will be entered under Rule 50.

Mar. 14, 1969 AGREED COMPUTATION filed

Mar. 19, 1969 DECISION ENTERED, Judge Forrester.

Appellate Proceedings

June 16, 1969 NOTICE OF APPEAL to U.S.C.A., 5th Cir., filed by Petr.

June 17, 1969 NOTICE OF FILING with cy. of Notice of Appeal sent to Richard M. Hahn, Acting Chief Counsel.

June 17, 1969 NOTICE, to parties, of assembling and date for transmission of record.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket No. 28,163

[Caption Omitted]

RELEVANT DOCKET ENTRIES *

Date	Filings & Proceedings
1969	
July 28	Cause docketed and record on appeal filed
	* * * *
1970	
January 15	Argued and submitted to Ainsworth, Dyer and Simpson
June 23	Opinion filed and judgment filed, entered and issued as mandate

* These docket entries have been reconstructed from the petitioner's files. The original docket entry list was destroyed by fire at the offices of the Court of Appeals in New Orleans.

TAX COURT OF THE UNITED STATES

Docket No. 6740-66

Filed: Dec. 30, 1966

ANNE GOYNE MITCHELL, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing symbols PA:NO:WMB, dated September 30, 1966, and as a basis for her case, alleges as follows:

* * * *

5. The facts upon which the petitioner relies as the basis of this case are as follows:

* * * *

(G) During the existence of the community of acquets and gains between petitioner and her former husband, Emmett L. Mitchell, Jr., all of the income realized by either of them was community income.

* * * *

EXHIBIT "A"

Mrs. Anne Goyne Mitchell
505 South Vienna Street
Ruston, Louisiana 71270

Mrs. Anne Goyne Mitchell
P. O. Box 19772
Baton Rouge, Louisiana 70803

Dear Mrs. Mitchell:

In accordance with the provisions of existing internal revenue laws, notice is hereby given that the determination of your income tax liability discloses a deficiency for the taxable year ended December 31, 1955, in the amount of $323.00 and additions to tax for delinquency under Code section 6651(a) in the amount of $80.75 and for negligence under Code section 6653(a) in the amount of $16.15; a deficiency for the taxable year ended December 31, 1956, in the amount of $1,267.73 and additions to tax for delinquency under Code section 6651 (a) in the amount of $316.93, for negligence under Code section 6653(a) in the amount of $63.39, and for failure to pay estimated income tax under Code section 6654 in the amount of $35.49; a deficiency for the taxable year ended December 31, 1957, in the amount of $453.00 and additions to tax for delinquency under Code section 6651(a) in the amount of $113.25, for negligence under Code section 6653(a) in the amount of $22.65, and for failure to pay estimated income tax under Code section 6654 in the amount of $12.68; a deficiency for the taxable year ended December 31, 1958, in the amount of $1,750.71 and additions to tax for delinquency under Code section 6651(a) in the amount of $425.02, negligence under Code section 6653(a) in the amount of $87.54, and for failure to pay estimated income tax under Code section 6654 in the amount of $47.00; and a deficiency for the taxable year ended December 31, 1959, in the amount of $871.34 and additions to tax for delinquency under Code section 6651(a) in the amount of $173.24, negligence under Code section 6653(a) in the

amount of $43.57, and for failure to pay estimated income tax under Code section 6654 in the amount of $17.27. The enclosed statement shows the computation of the deficiency or deficiencies.

If you do not intend to contest this determination in the Tax Court of the United States, please sign the enclosed Waiver and return it promptly in the enclosed envelope. This will permit early assessment of the deficiency or deficiencies and limit accumulation of interest.

If you do not sign and return the Waiver, the deficiency or deficiencies will be assessed for collection, as required by law, upon the expiration of 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Very truly yours,

SHELDON S. COHEN
Commissioner

/s/ JOHN P. FITZGERALD
John P. Fitzgerald
Chief, Appellate Branch Office

Enclosures: 3
Statement
Waiver
Return envelope

AP:NO:MB:90-D

STATEMENT

Mrs. Anne Goyne Mitchell
505 South Vienna Street
Ruston, Louisiana 71270

Mrs. Anne Goyne Mitchell
P. O. Box 19772
Baton Rouge, Louisiana 70803

Tax Liability for Taxable Years Ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959.

Year	Income Tax Deficiency Tax	Additions to Tax Section 6651(a)	Section 6653(a)	Section 6654
1955	$ 323.00	$ 80.75	$ 16.15	—
1956	1,267.73	316.93	63.39	$ 35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.00
1959	871.34	173.24	43.57	17.27
Totals	$4,665.78	$1,109.19	$233.30	$112.44

	1958	1959
Statutory deficiency	$1,750.71	$871.34
Income tax withheld	50.65	178.37
Net underpayment of income tax	$1,700.06	$692.97

The enclosed agreement form reflects this adjustment.

Inasmuch as you failed to file a return for each of the taxable years ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959, within the time prescribed by law, 25

per centum of the tax for each of said years has been added to said tax in accordance with the provisions of section 6651(a) of the Internal Revenue Code of 1954.

The five percent addition to the tax for each of the taxable years ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959, has been asserted under the provisions of section 6653(a) of the Internal Revenue Code of 1954.

The addition to tax for failure to pay estimated tax has been asserted for each of the years ended December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959, under the provisions of section 6654 of the Internal Revenue Code of 1954.

* * * *

TAX COURT OF THE UNITED STATES

Docket No. 6740-66

Filed: Feb. 21, 1967

ANNE GOYNE MITCHELL, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case admits, alleges and denies as follows:

* * * *

(F) and (G) Admits the allegations of subparagraphs (F) and (G) of paragraph 5. of the petition.

* * * *

EXHIBIT "A"

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
OFFICE OF REGIONAL COMMISSIONER

Sep. 30, 1966

[EMBLEM]

Mrs. Jane Isabell Goyne Sims
6 Westwood Drive
Ruston, Louisiana 71270

Dear Mrs. Sims:

There will be assessed against you the following amounts of income tax, plus interest as provided by law, and additions to the tax, constituting your liability as a transferee of the assets of Mrs. Anne Goyne Mitchell, 505 South Vienna Street, Ruston, Louisiana, 71270, or P. O. Box 19772, Baton Rouge, Louisiana, 70803, for unpaid income taxes in the amounts stated hereafter, plus interest as provided by law, due from said Mrs. Anne Goyne Mitchell:

Unpaid income tax for the taxable year ended December 31, 1955, in the amount of $323.00 and additions to tax for delinquency under Code section 6651(a) in the amount of $80.75 and negligence under Code section 6653(a) in the amount of $16.15; unpaid income tax for the taxable year ended December 31, 1956, in the amount of $1,267.73 and additions to tax for delinquency under Code section 6651(a) in the amount of $316.93, for negligency under Code section 6653(a) in the amount of $63.39, and for failure to pay estimated income tax under Code section 6654 in the amount of $35.49; unpaid income tax for the taxable year ended December 31, 1957, in the amount of $453.00 and additions to tax for delinquency under Code section 6651(a) in the amount of $113.25, for negligence under Code section 6653(a) in the amount of $22.65, and for failure to pay estimated income tax under Code section 6654 in the amount of $12.68; unpaid income tax for the taxable year ended December 31, 1958, in the amount of $1,700.06

and additions to tax for delinquency under Code section 6651(a) in the amount of $425.02 for negligence under Code section 6653(a) in the amount of $87.54, and for failure to pay estimated income tax under Code section 6654 in the amount of $47.00; and unpaid income tax for the taxable year ended December 31, 1959, in the amount of $692.97 and additions to tax for delinquency under Code section 6651(a) in the amount of $173.24 for negligence under Code section 6653(a) in the amount of $43.57 and for failure to pay estimated income tax under section 6654 in the amount of $17.27. The enclosed statement shows the computation of the amounts of tax and additions to tax stated.

If you do not intend to contest this determination in the Tax Court of the United States, please sign the enclosed Waiver and return it promptly in the enclosed envelope. This will permit early assessment of the tax and additions to tax and limit accumulation of interest. If you do not sign and return the Waiver, the unpaid tax and additions to tax will be assessed for collection, as required by law, upon the expiration of 90 days (150 days if you are outside the States of the Union and the District of Columbia) from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules. A copy of the rules of the Court may be obtained by writing to the Clerk, Tax Court of the United States, Box 70, Washington, D. C. 20044.

Very truly yours,

SHELDON S. COHEN
Commissioner

(Signed) JOHN P. FITZGERALD
John P. Fitzgerald
Chief, Appellate Branch Office

Enclosures: 3
Statement
Waiver
Return envelope

AP:NO:MB:90-D

STATEMENT

Mrs. Anne Goyne Mitchell, Transferor
505 South Vienna Street
Ruston, Louisiana 71270

Mrs. Anne Goyne Mitchell, Transferor
P. O. Box 19772
Baton Rouge, Louisiana 70803

Tax Liability for the Taxable Years Ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959.

Mrs. Jane Isabell Goyne Sims, Transferee
6 Westwood Drive
Ruston, Louisiana 71270

Income Tax

LIABILITY

Additions to Tax—Internal Revenue Code of 1954

Year	Tax	Section 6651(a)	Section 6653(a)	Section 6654
1955	$ 323.00	$ 80.75	$ 16.15	—
1956	1,267.73	316.93	63.39	$ 35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.00
1959	871.34	173.24	43.57	17.27
Totals	$4,665.78	$1,109.19	$233.30	$112.44

1958 statutory deficiency	$1,750.71
Prepayment credits not claimed on return:	
Withholding from wages	50.65
Net underpayment of income tax	$1,700.06
1959 statutory deficiency	$ 871.34
Prepayment credits not claimed on return:	
Withholding from wages	178.37
Net underpayment of income tax	$ 692.97

The enclosed agreement form reflects these adjustments. The records of this office indicate that assets were transferred to you by Mrs. Anne Goyne Mitchell on or about December 23, 1964, without consideration, that such transfer rendered Mrs. Mitchell insolvent, and that you hold title to such assets for the account of Mrs. Mitchell. The above-stated amounts represent your liability as a transferee of assets of Mrs. Anne Goyne Mitchell for the unpaid income tax and additions to the tax, plus interest as provided by law, due from Mrs. Anne Goyne Mitchell for the taxable years ended December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958, and December 31, 1959.

TAX COURT OF THE UNITED STATES

Docket No. 6740-66
Docket No. 6741-66

Filed: Oct. 24, 1967

ANNE GOYNE MITCHELL,
JANE ISABELL GOYNE SIMS, PETITIONERS

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

STIPULATION OF FACTS

IT IS HEREBY STIPULATED that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof, subject to the right of either party to object to the admission of such facts in evidence on the grounds of materiality or relevance; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. Petitioner, Anne Goyne Mitchell, is an individual, whose residence address is 505 South Vienna Street, Ruston, Louisiana. Petitioner, Jane Isabell Goyne Sims, is an individual, whose residence address is 6 Westwood Drive, Ruston, Louisiana.

2. Anne Goyne Mitchell and Emmett L. Mitchell, Jr. were married on or about September 22, 1946.

3. At all times during the years 1955 through 1959, inclusive, Anne Goyne Mitchell was married to and cohabiting with, Emmett L. Mitchell, Jr.

4. Sometime during July 1960, Emmett L. Mitchell, Jr. and Anne Goyne Mitchell began living separate and apart.

5. On or about August 4, 1961, Anne Goyne Mitchell filed suit for separation from bed and board against Emmett L. Mitchell, Jr., praying that she be allowed to accept the community of acquets and gains with benefit of inventory.

6. On or about September 14, 1961, Anne Goyne Mitchell was granted a separation from bed and board a "mensa et thoro," against Emmett L. Mitchell, Jr.

7. On or about October 11, 1962, Anne Goyne Mitchell was granted a judgment against Emmett L. Mitchell, Jr. decreeing unto her a divorce "a vinculo matrimonii".

8. During the existence of the marriage between Anne Goyne Mitchell and Emmett L. Mitchell, Jr., all of the income realized by either party was community income.

9. Emmett L. Mitchell, Jr. and Anne Goyne Mitchell did not file Federal income tax returns, neither jointly nor separately, for any of the taxable years 1954, 1955, 1956, 1957, 1958 or 1959.

10. Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, covering the taxable years 1954, 1955, 1956, 1957, 1958 and 1959 was executed by Emmett L. Mitchell, Jr. on or about January 11, 1961. The Federal income tax liabilities indicated on said Form 870 for all of said taxable years were determined pursuant to the rates applicable to joint return filings. A copy of said Form 870 is attached and marked Exhibit A.

11. Predicated on the Form 870 executed by Emmett L. Mitchell, Jr. on or about January 11, 1961, Federal income taxes and penalties were jointly assessed on March 10, 1961, against Anne Goyne Mitchell and Emmett L. Mitchell, Jr. relative to the taxable years 1954 through 1959, inclusive.

12. The March 10, 1961 assessments of Federal income taxes and additions to the tax, jointly assessed against Anne Goyne Mitchell and Emmett L. Mitchell, Jr., relative to the taxable years 1954 through 1959, inclusive, was made without notice to or knowledge of Anne Goyne Mitchell.

13. Anne Goyne Mitchell had not granted Emmett L. Mitchell, Jr. actual or implied consent, authority or power to legally bind her relative to the Form 870 executed by Emmett L. Mitchell, Jr. on or about January 11, 1961 covering Federal income tax liabilities for the years 1954 through 1959.

14. Anne Goyne Mitchell never acquiesced or consented to being a participant or partner in the Form 870, relative to the taxable years 1954 through 1959 signed by Emmett L. Mitchell, Jr. on or about January 11, 1961; nor did she consent or acquiesce to being obligated or bound by such Form 870 or any subsequent assessments thereunder.

15. The joint and several assessments of Federal income taxes and additions to the tax, relative to the years 1954 through 1959, said assessments having been made on March 10, 1961 were invalid and void as against Anne Goyne Mitchell.

16. Anniebel Taylor Goyne, mother of Anne Goyne Mitchell and Jane Isabell Goyne Sims, died on November 5, 1964. The succession proceedings of Anniebel Taylor Goyne were opened in Lincoln Parish, Louisiana, State District Court under Probate Docket Number 3880. The documents, *Original Petition For Possession*, *Affidavit and Sworn*, *Detailed List of Property*, *Computation Showing Inheritance Tax Due the State of Louisiana*, *Waiver of Rule and Acknowledgment of Inheritance Taxes Due*, and *Judgment of Possession*, copies of which

are attached and marked Exhibits B, C, D, E and F, respectively, in said probate proceedings were filed with the State District Court on November 13, 1964.

17. On December 23, 1964, Anne Goyne Mitchell did grant, convey, transfer and deliver, all her right, title and interest in the real estate, described in Exhibit F, *Judgment of Possession*, inherited by Anne Goyne Mitchell from Anniebel Taylor Goyne, unto Jane Isabell Goyne Sims.

18. Attached hereto and marked Exhibit G is the deed of conveyance, filed for record in Conveyance Book 1056, on December 24, 1964, Caddo Parish, Louisiana, from Anne Goyne Mitchell unto Jane Isabell Goyne Sims of the property described as:

> Lots No. 70 and 71 of Caddo Heights Supplement in Section 3, Township 20 North, Range 15 West, Caddo Parish, Louisiana.

19. Attached hereto and marked Exhibit H is the deed of conveyance, filed for record in Conveyance Book number 106, on December 23, 1964, Lincoln Parish, Louisiana, from Anne Goyne Mitchell unto Jane Isabell Goyne Sims of the property described as:

> S ½ of Lot No. 1 of Square No. 12, Town of Ruston, Louisiana, together with all improvements and appurtenances thereon and thereunto belonging, according to the original plat and survey of Town of Ruston, Louisiana, on file and of record in the office of the Clerk of Court in and for Lincoln Parish, Louisiana;
>
> Lot No. 45 of Unit No. 2 of Northwood Terrace Subdivision, as per map and plat of said subdivision on file and of record in the office of the Clerk of Court in and for Lincoln Parish, Louisiana;
>
> All that part of E ½ of SE ¼, Section 3, Township 19 North, Range 5 West, being situated in Lincoln Parish, Louisiana.

20. On November 14, 1964, $2,402.78 was transferred from the account of Mrs. Charles C. (Anniebel Taylor)

Goyne with the Ruston Building and Loan Association, Ruston, Louisiana to the account of Anne Goyne Mitchell with the said Ruston Building and Loan Association. A copy of said Ruston Building and Loan Association's record of Anne Goyne Mitchell's account is attached and marked Exhibit I.

21. A copy of Ruston Building and Loan Association's record of Jane Isabell Goyne Sims' account is attached and marked Exhibit J.

22. Copies of optional payment by Ruston Building and Loan Association unto Anne Goyne Mitchell, dated December 28, 1964 and payment slip of Jane Isabell Goyne Sims to Ruston Building and Loan Association, dated January 26, 1965, are attached as Exhibit K.

23. On February 1, 1965, Anne Goyne Mitchell executed Form 433-AB, Statement of Financial Condition and Other Information, a copy of which is attached and marked Exhibit L.

(Signed) PAUL K. KIRKPATRICK, JR.

Paul K. Kirkpatrick, Jr.
Counsel for Petitioners

LESTER R. URETZ
Lester R. Uretz
Chief Counsel
Internal Revenue Service

NAME Mrs. Jane Wayne Sitz SPECULATION NO.
Zenith and Ella
Ruston, Louisiana

DATE	WITHDRAWALS	DIVIDENDS	SHARE PAYMENTS	SHARE BALANCE
JAN 26 60			4,721.21	1,721.21
FEB 29 60	515.73			1,205.48
JAN -5 60	200.00			1,205.48
[illegible]		25.71		1,231.19
SEP -3 60	435.00	16.91		796.19
DEC 27 60		16.91		813.10
JAN 27 60		18.29		831.39
SEP -2 60	300.00			531.39
DEC 29 60	(11.94)	11.94		543.33
JAN 28 67	12.89	12.89		556.22

This item certified to be
A true copy from our records.
Henry D. Fraser
Sec.-Treas.

6740-6 Chattel

RUSTON BUILDING & LOAN ASSOCIATION
RUSTON, LOUISIANA

EXHIBIT J

433-AB
(REV. 1963)

U. S. TREASURY DEPARTMENT • INTERNAL REVENUE SERVICE

STATEMENT OF FINANCIAL CONDITION AND OTHER INFORMATION

1. NAME OF TAXPAYER	2. CHECK APPROPRIATE BLOCK
Jane C. Mitchell	☒ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION

3. PRESENT HOME ADDRESS	4. HOME PHONE
305 South Vienna Street Ruston, Louisiana	255-0906
5. BUSINESS, SHOW ADDRESS	**6. BUS. PHONE**

7. FORECLOSURE, BANKRUPTCY, RECEIVERSHIP, OR ASSIGNMENT FOR BENEFIT OF CREDITORS PROCEEDINGS PENDING? ☐ YES ☒ NO

IF INDIVIDUAL, COMPLETE THIS SECTION AND REVERSE OF THIS FORM

8. OCCUPATION (Husband (H))	9. SOCIAL SECURITY NUMBER (H)	10. AVERAGE WEEKLY TAKE HOME PAY (H)
(W) School Teacher	(W) 438-30-7122	(H) (W) 93.50

11. HUSBAND'S EMPLOYER (Name and Address)	12. PHONE	13. HOW LONG EMPLOYED	14. DATES PAID
			FOLD
15. WIFE'S EMPLOYER (Name and Address)	**16. PHONE**	**17. HOW LONG EMPLOYED**	**18. DATES PAID**
Lincoln Parish School Board Ruston, Louisiana	255-1430	5 Years	1st of each month

19. OTHER INCOME (Source)	20. AMOUNTS	21. DATES RECEIVED
Interest Income from Ruston Building & Loan Assn. Ruston, Louisiana	68.84	June 30 & Dec. 31st

22. MARITAL STATUS SINGLE MARRIED	23. NO. OF EXEMPTIONS (Excluding H & W)	24. NAME AND ADDRESS OF NEXT OF KIN (Other than spouse)
	2	Mrs. Jane G. Sims Westwood Hills Ruston, Louisiana

IF PARTNERSHIP OR CORPORATION, COMPLETE THIS SECTION AND REVERSE OF THIS FORM

25. ESTIMATED AVERAGE NET INCOME FOR NEXT SIX MONTHS:

26. GIVE THE FOLLOWING INFORMATION ON OFFICERS OR PARTNERS

NAME AND TITLE	ADDRESS	NUMBER OF SHARES OR INTEREST
	6740-6 total	

(OVER)

FORM 433-AB (REV. 9-63)

EXHIBIT

LIFE INSURANCE POLICIES OWNED BY YOU

POLICY NUMBER	NAME OF COMPANY	BENEFICIARY YES	BENEFICIARY NO	AMOUNT OF POLICY	CASH SURRENDER VALUE	BALANCE DUE ON LOAN
Group Policy	with Lincoln Parish School Board	Yes		3,650.00	None	None

BANK ACCOUNTS (GIVE NAME AND ADDRESS OF BANK)

First National Bank
Ruston, Louisiana

SAFE DEPOSIT BOXES (GIVE LOCATION OF SAFE DEPOSIT BOXES)

None

AUTOMOBILES (GIVE DESCRIPTION AND LICENSE NUMBER OF VEHICLES)

1963 Buick Special
La. 92F 827

REAL PROPERTY (GIVE BRIEF DESCRIPTION AND LOCATION)

STATEMENT OF ASSETS AND LIABILITIES

ITEM	VALUE	EQUITY IN ASSET	AMOUNT OF NO. PAYMENTS	PLEDGEE OR OBLIGEE	DATE PLEDGED	DATE OF FINAL PAYMENT
CASH						
BANK ACCOUNTS	350.00					
STOCKS AND BONDS						
LIFE INSURANCE CASH OR LOAN VALUE ON POLICIES						
ACCOUNTS RECEIVABLE						
NOTES RECEIVABLE						
MERCHANDISE INVENTORY						
MACHINERY AND EQUIPMENT						
AUTOMOBILES	1,400.00	763.20	47.70	Lincoln Bank & Trust	June '65	May 1966
HOUSEHOLD FURNITURE	500.00					
REAL PROPERTY						
OTHER ASSETS (Describe)						
ACCOUNTS PAYABLE		150.00				
NOTES PAYABLE						
OTHER (Include judgments)						
1964 Income Tax		168.00				
TOTAL		$ 1,168.80	$ 47.70			

FEDERAL TAXES OUTSTANDING $

HAVE YOU DISPOSED OF ANY ASSETS OR PROPERTY BY SALE, TRANSFER, EXCHANGE, GIFT OR IN ANY OTHER MANNER EXCEPT FOR FULL VALUE FROM THE BEGINNING OF THE TAXABLE PERIOD IN WHICH THE LIABILITY WAS INCURRED TO THE PRESENT DATE?

☐ NO ☒ YES - ATTACH SEPARATE STATEMENT TO SHOW AMOUNTS, DATES, CIRCUMSTANCES, ETC.

ADDITIONAL INFORMATION - GIVE GENERAL STATEMENT REGARDING PROSPECT OF INCREASE IN VALUE OF ASSETS OR IN PRESENT INCOME - INCLUDE TAXPAYER'S AGE AND CONDITION OF HEALTH.

Age 40
Health - Good

AFFIDAVIT

I (WE) declare under the penalties of perjury that the foregoing statement of assets and liabilities, and other information is true and correct to the best of my (OUR) knowledge and belief.

DATE	SIGNATURE	SIGNATURE
Feb. 1, 1965	Rose B Mitchell	

(REVERSE)

FORM 433-AB (REV. 8-63)

ANNE G. MITCHELL
505 SOUTH VIENNA STREET
RUSTON, LOUISIANA

STATEMENT SUPPORTING FORM 433-AB, ITEM 33

On December 23, 1964 transferred to my sister, Mrs. Jane G. Sims, without consideration the following:

I. My undivided one-half interest in the following real property which was acquired by inheritance from my mother in November, 1964:

Description	Value of My One-half Interest In Mother's Succession
a. S ½ of Lot No. 1 of Square No. 12, Town of Ruston, Louisiana, together with all improvements and appurtenances thereon and thereunto belonging, according to the original plat and survey of Town of Ruston, Louisiana on file and of record in the office of the Clerk of Court in and for Lincoln Parish, Louisiana.	$7,500.00
b. Lot No. 45 of Unit No. 2 of Northwood Terrace Subdivision, as per map and plat of said subdivision on file and of record in the office of the Clerk of Court in and for Lincoln Parish, Louisiana.	500.00
c. All that part of E ½ of SE ¼, Section 3, Township 19 North, Range 5 West, being situated in Lincoln Parish, Louisiana.	1,500.00
d. Lots No. 70 and 71 of Caddo Heights Supplement in Section 3, Township 20 North, Range 15 West, Caddo Parish, Louisiana.	50.00
TOTAL VALUE OF REAL PROPERTY	$9,550.00

II. Cash in savings account in Ruston Building & Loan Association, Ruston, La. $1,721.21. 1/26/65

The foregoing assets were transferred to my sister on the recommendation of my attorney who had just closed my mother's succession in November, 1964, approximately one month prior to receipt on December 19, 1964, of the Final Notice Before Seizure for 1954 income tax. Prior to closing my mother's succession, I discussed with my attorney the matter of the income tax liability for 1954 through 1959. He advised that I could renounce my interest in the succession and thus pass my interest in mother's estate directly to my two children. However, as it had been over two years since I was contacted by Internal Revenue Agent, Deuel C. Smith, in regard to signing with my former husband on his Offer in Compromise, and I had heard nothing since, he felt that the matter was settled and therefore put me in possession. Then, after I received the Notice on December 19, 1964, he felt that to protect my interest, the foregoing assets should be transferred which would leave me in the same financial status as if I had renounced my interest in mother's estate.

FORM 433 D
(REV. JAN. 1961)

U.S. TREASURY DEPARTMENT—INTERNAL REVENUE SERVICE

MONTHLY INCOME AND EXPENSE ANALYSIS

TAXPAYER'S NAME AND ADDRESS

Anne G. Mitchell
505 South Vienna Street, Boston, Louisiana

INCOME		PERSONAL EXPENSES	
Salary, pay (Husband)	$	Rent	$ None
Salary, pay (Wife)	405.16	Groceries	130.00
Dividends, Interest, etc.		Installments (See Item 13, Form 433 A)	None
Income from business		Utilities	30.00
Other (Specify)		Transportation-Gas, Oil, Repairs	30.00
		Other (Specify)	
		Auto Insurance	20.00
		Auto Note Payment	47.70
		Clothing	60.00
		Medical	15.00
		Laundry & Misc.	72.46
TOTAL	$ 405.16	TOTAL	$ 405.16
NET DIFFERENCE (Income minus personal expenses)			

FORM 433 D (REV. 1-60)

TAX COURT OF THE UNITED STATES

Docket No. 6740-66

Docket No. 6741-66

Filed: Oct. 24, 1967

ANNE GOYNE MITCHELL,
JANE ISABELL GOYNE SIMS, PETITIONERS

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

SUPPLEMENTAL STIPULATION OF FACTS

IT IS HEREBY STIPULATED that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof, subject to the right of either party to object to the admission of such facts in evidence on the grounds of materiality or relevance; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

24. The separation from bed and board a mensa et thoro, referred to in paragraph 6 of the Stipulation of Facts document, was granted by default pursuant to the petition of Anne Goyne Mitchell.

25. Upon the dissolution of the community of acquets and gains between Anne Goyne Mitchell and Emmett L. Mitchell, Jr., she received neither a distribution of community property nor a property settlement.

26. Jane Isabell Goyne Sims was, at all times pertinent hereto, married to Robert B. Sims.

27. The schedule of the assessment of Federal income taxes, penalties and interest for the taxable years 1955 through 1959, inclusive, made on March 10, 1961, follows:

Taxable Year	Account Number	Income Tax	Penalties	Interest to March 10, 1961
1955	66T363	$ 743.92	$ 389.84	$215.19
1956	66T364	2,661.45	1,401.73	610.19
1957	66T365	1,043.53	547.22	176.64
1958	66T366	3,499.77	1,843.88	382.43
1959	66T367	1,415.53	742.30	69.74

28. No payments were made against the assessments set forth in paragraph 27 for the taxable years 1956, 1957, 1958 and 1959.

29. The only payments made against the assessment for the taxable year 1955, as set forth in paragraph 27, were made by Emmett L. Mitchell, Jr., in the total amount of $135.00; $50.00 having been paid on July 1, 1965 and $85.00 on December 7, 1965.

30. On March 20, 1964 Emmett L. Mitchell, Jr. submitted an Offer in Compromise, Form 656, incorporating Collateral Agreements, Forms 2261 and Aud-748, regarding his individual liabilities for Federal income taxes and penalties for the taxable years 1954 through 1959. Copies of the aforementioned Form 656, Form 2261 and Form Aud-748, submitted to the Internal Revenue Service by Emmett L. Mitchell, Jr., dated March 20, 1964, are attached as Exhibits M, N, and O, respectively.

31. The aforementioned Offer in Compromise and Collateral Agreements were accepted by the Internal Revenue Service on September 9, 1964. Copy of District Director R. L. Phinney's letter of acceptance, dated September 9, 1964 is attached as Exhibit P.

32. Upon acceptance of the Offer in Compromise and Collateral Agreements by the Internal Revenue Service, Emmett L. Mitchell, Jr. made the following payments thereunder:

Date	Amount	Taxable year Payment applied against
9-09-64	$100.00	1954
10-14-64	25.00	1954
11-19-64	25.00	1954
7-01-65	50.00	1955
12-07-65	85.00	1955

33. No payments other than as shown in paragraph 31 were made by Emmett L. Mitchell, Jr. after acceptance by the Internal Revenue Service of the Offer in Compromise and Collateral Agreements and said Offer in Compromise and Collateral Agreements became in default.

34. Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, covering the taxable year 1954 was executed by Anne Goyne Mitchell on August 4, 1956. A copy of said Form 870 is attached and marked Exhibit Q.

35. Predicated on the Form 870 executed by Anne Goyne Mitchell on August 4, 1965, the Federal income tax, penalties and interest were individually assessed against her for the taxable year 1954 on August 16, 1965 as follows:

Income tax		$244.90
Penalties:		
Section 294(d)(1)(A)	$ 22.65	
Section 6653(b)	131.00	153.65
Interest		152.32
Total assessment		$550.87

Thereafter, on December 30, 1966, Anne Goyne Mitchell filed a claim for refund for the above amounts and on July 25, 1967 brought a refund action in the United States District Court for the Western District of Louisiana based upon her claim, which action is still pending.

36. Anne Goyne Mitchell and Jane Isabell Goyne Sims are sisters.

37. On September 27, 1967, the procedures of abatement were executed by the Internal Revenue Service with respect to the assessment of Federal income taxes, penalties and interest, made on March 10, 1961, as it applied, in entirety, to Anne Goyne Mitchell for the taxable years 1955 through 1959. Also on the same date, the procedures of abatement were executed by the Internal Revenue Service, with respect to the aforementiond assessment as it applied to Emmett L. Mitchell, Jr., down to an amount which reflected the Federal income taxes, penalties and interest against his one-half portion of the community income for the taxable years 1955 through 1959, inclusive.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Counsel for Petitioners

(Signed) LESTER R. URETZ
Lester R. Uretz
Chief Counsel
Internal Revenue Service

Mrs. Anne Gayle Mitchell
505 South Vienna
Ruston, Louisiana

WAIVER OF RESTRICTIONS ON ASSESSMENT AND COLLECTION OF DEFICIENCY IN TAX AND ACCEPTANCE OF OVERASSESSMENT

DEFICIENCIES

TAXABLE YEAR	TYPE OF TAX	AMOUNT OF TAX	PENALTY	
1931	Income	$ 241.90	$ 133.05	

OVERASSESSMENTS

TAXABLE YEAR	TYPE OF TAX	AMOUNT OF TAX	PENALTY	

DKT NO. 6740-Gen'l.
EXH. Q

NAME AND ADDRESS OF TAXPAYER(S) (Number, street, city or town, State, ZIP code)

SIGNATURE	Anne Gayle Mitchell	DATE	Dec. 4, 1935
SIGNATURE		DATE	
SIGNATURE	TITLE	DATE	

Corporate Seal

TRANSCRIPT OF PROCEEDINGS

Filed: Oct. 30, 1967

[10] ANNE GOYNE MITCHELL

was called as a witness on behalf of the Petitioner, and, having been first duly sworn, testified as follows:

THE CLERK:

For the record, may we have your name?

THE WITNESS:

Anne Goyne Mitchell.

THE CLERK:

Your address?

THE WITNESS:

101 Ashway, Lafayette, Louisiana.

THE CLERK:

Thank you.

DIRECT EXAMINATION

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, are you the Petitioner in Anne Goyne [11] Mitchell vs. the Commissioner of Internal Revenue in Docket No. 6740-66?

A Yes. I am.

Q Mrs. Mitchell, did you file any tax returns for the years 1954 through 1959?

A No.

Q Mrs. Mitchell, would you tell the Court why you did not file tax returns?

A Well I had not been responsible for filing tax returns at any time after my marriage. Tax returns had, as far as I knew, been filed each year.

MR. McARDLE:

Objection, Your Honor.

The returns themselves will be the best evidence as to whether they were filed.

MR. KIRKPATRICK:

If Your Honor Please, the witness has been assessed penalties for failure to file returns and this testimony goes to the reasonable cause for her failure to file and negligence.

THE COURT:

I think I will let the statement stand. It isn't worth much as evidence unless you want to go into it to show how she knew or thought she knew.

MR. KIRKPATRICK:

Yes, Your Honor.

THE COURT:

That's a conclusion on the part of the witness and worth nothing as evidence really unless it is expanded I will let it stand.

[12] BY MR. KIRKPATRICK:

Q Mrs. Mitchell, when were you married?
A September 22nd, 1946.
Q And you were divorced in 1962?
A Yes.
Q During that period of time, did you ever file a tax return?
A No.
Q Did you believe that your husband filed tax returns?
A Yes. I did.
Q Why did you believe that he was filing tax returns?
A He led me to believe that he was filing tax returns each year at the proper time.
Q How did he lead you to believe that, Mrs. Mitchell?
A He talked about getting help with his, getting his tax return filled out. He talked about the difficulty of finding additional money when it was needed to pay the taxes at the time that the taxes were due.

Q Mrs. Mitchell, did you know that someone in your family was required to file Federal Tax Returns?

A Yes.

Q Did you know how much money your husband made?

A No. I did not.

Q During the entire course of your marriage, did you [13] ever know how much money your husband made?

A No. I didn't.

Q Did you ever ask your husband if he filed his tax return?

A Yes, of course.

Q Did you ask him once or did you ask him many times?

A Each year.

Q Is it your testimony you asked your husband each year whether he filed his tax return or not?

A Yes. Yes.

Q Did you feel it necessary to ask him if he had filed his tax return?

A Yes. I did.

Q Why did you find it necessary?

A Because he was very remiss in taking care of his financial obligations in other respects.

I frequently had to make comments regarding things that needed to be taken care of in a financial way.

Q Well did this cause you to think perhaps that he had not filed his tax return?

A No. It did not.

Q Well if you were concerned about his not paying other bills and being remiss in his financial obligations, why did you not think he would be remiss in this type of obligation?

A I would say this; I was not so much concerned about [14] the possibility that he would not file a tax return as the possibility that he would not make the deadline at which time it should be filed.

I would not have dreamed that he would not have filed the return because of his fear of the possible consequences which I assume would be immediate.

Q Mrs. Mitchell, did it strike you as unusual that your husband did not ask you to sign a tax return?

A No, it didn't. I assumed that he signed my name to the return which he had done prior to this time.

MR. McARDLE:

Objection.

If he had signed it, the return would be the best evidence of his signing.

THE COURT:

She said, she assumed he had signed her name as he had done and that is a conclusion on the part of this witness.

That will be stricken, unless you care to go into it.

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, your husband ever told you that he had signed your name?

A No. Just that he had sent the return.

MR. KIRKPATRICK:

If Your Honor, Please, it may not be the most important point in the world but I suggest this witness' assumption is pertinent to this inquiry [15] because her assumption does involve an attempt at negligence and reasonable cause and—

THE COURT:

I think it is pertinent to the inquiry, too, Mr. Kirkpatrick, but it is not worth very much as evidence unless you show what it is based upon. The evidences that led her to assume—

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, you did assume a tax return had been filed, did you not?

A Yes. I did.

Q Did your husband tell you that he was filing a tax return?

A Yes, he did. Every year.

Q Did your husband tell you that he employed anyone to prepare that tax return?

A Yes, he did.

Q Who did he say he employed?

A He said that he employed Mr. Albritton who was an accountant in Farmerville, which was his hometown.

Q Would this be true during the entire period, Mrs. Mitchell or would this be true as to a particular year?

A It would be true during, certainly during these years that are under discussion.

Q Did you know, Mrs. Mitchell, that your husband —did you know whether or not your husband—strike that, please.

[16] Did you know whether or not you were required to sign your husband's Federal Income Return?

A Well, yes. I knew a joint return should be filed or that a return should be filed.

Q And you knew that—did you know you had not signed that return?

A Yes.

Q Were you conscious of this when you were asking your husband if he had, if he had filed his tax return?

A Was I conscious that I had not signed the return?

Q Yes, Ma'am.

A No. Actually I was not for this reason; he had filed returns in the past.

MR. McARDLE:

Objection, Your Honor, whether he had filed or not. The returns would be the best evidence of that.

MR. KIRKPATRICK:

If Your Honor, Please, this case involves whether a return was, in fact, filed.

This witness has been assessed penalties for her failure to file a return and for her intentional disregard of the Rules.

This witness' testimony is that she thought her husband had filed returns. He had given her reasons to believe that he had filed returns.

THE COURT:

We are on the signatures on the return [17] now, Mr. Kirkpatrick and the particular statement under attack of the objection is that in the past he had signed her name to returns.

Now obviously she's talking about an instrument which possibly might be available for introduction as an exhibit and what has been invoked by the objection is the best evidence rule.

Unless you can show unavailability or some reasonable attempt to obtain such a return or copy I think I will have to sustain that objection.

MR. KIRKPATRICK:

Well I agree Your Honor.

As a matter of fact, the Government does not have the returns.

THE COURT:

If you can show that then that is a showing of unavailability and I will allow the witness to testify.

MR. KIRKPATRICK:

Well I really can't, the witness is not competent to testify that her husband signed her name to the return if she had not signed the return herself. I agree she cannot establish the fact her husband signed her name to the return.

THE COURT:

I believe you misunderstood what I said, Mr. Kirkpatrick.

I said I would allow the witness to testify as to prior returns and maybe her not having actually seen them [18] would become unimportant if you are able to show the unavailability of such returns.

MR. KIRKPATRICK:

Will Counsel agree there are no such returns?

MR. McARDLE:

No, because I haven't check the Federal records and beyond that even if the Federal Government no longer has the returns the best secondary evidence would be copies of the returns held by Anne Goyne Mitchell and no one has attempted to find out if she has copies of the returns.

THE COURT:

Absent such a showing, I will have to sustain the objection to the testimony.

MR. KIRKPATRICK:

All right, Your Honor.

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, why did you believe that your husband had signed your name to the returns?

A Well I knew that the return had to be signed. The returns had been sent each year and I had not signed them.

MR. McARDLE:

Objection, Your Honor.

THE WITNESS:

Therefore—

MR. McARDLE:

Objection.

The best evidence again. There is no evidence that returns were signed or were mailed.

THE COURT:

That will be sustained.

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, you have testified that you did not [19] sign any returns and that you did not see the returns and so obviously you do not know, of your own personal knowledge, that the returns were filed and that your name was signed to them?

A That's right.

Q I am asking you why you believed, as you testified, that your name had been signed to the return?

A Well I have reference here to the returns prior to 1954.

Q Do you know, Mrs. Mitchell, that returns were filed prior to 1954?

A To the best of my knowledge, although I did not see them.

MR. McARDLE:

Objection, Your Honor.

MR. KIRKPATRICK:

If Your Honor, Please, this witness is competent to testify if she does or does not have, does not know that returns were filed.

MR. McARDLE:

The returns themselves are the best evidence, Your Honor. I object.

MR. KIRKPATRICK:

Returns are the best evidence themselves, Your Honor, but this witness' knowledge cannot be shut out of the record simply because the Government cannot produce returns.

THE COURT:

There is no showing of an attempt to get them, Mr. Kirkpatrick. That's the whole point.

[20] MR. KIRKPATRICK:

If Your Honor, Please, the return itself is not the point that the Petitioner is trying to make.

The Petitioner is simply trying to develop the reasons why she believed that a return had been filed. I do not believe that the witness can testify that a return was filed.

If I will be permitted to continue, I will try to establish—

THE COURT:

Very well. Continue.

BY MR. KIRKPATRICK:

Q Mrs. Mitchell, you have testified that you have never signed a return—

A (Witness nodded affirmatively.)

Q —from the period of 1946 until the termination of your marriage.

Have you ever seen a tax return prepared for yourself and your husband or for either of you?

A No.

Q So you cannot testify, can you, that you saw a return prepared or that you know that one was filed?

A No. I cannot.

Q Of your own personal knowledge, you could not testify today, could you, that a return had ever been filed during the time that you were married?

[21] A Not of my own knowledge. No.

Q You do testify that you thought a return had been filed?

A Yes. I do.

Q Is it your testimony that you thought a return had been filed each year?

A Yes, it is.

Q And you assumed that your name had been signed to the return by your husband?

A That's correct.

Q My question is: what led you to make that assumption?

A Well, prior to 1954 these returns had been filed.

MR. McARDLE:

Objection.

THE WITNESS:

I don't know how to answer the questions without—

BY MR. KIRKPATRICK:

Q Do you believe returns were filed prior to 1954?

A Yes. I believe returns were filed all the way up to the end of my marriage until I learned otherwise.

Q Why do you think returns were filed prior to 1954?

A Because each year at the time that returns should be filed my former husband informed me that he was filing the return at the proper time.

[22] Q Now, Mrs. Mitchell, although you believed your husband was filing returns because he told you he was—

A Yes.

Q —why did you think your name had been affixed to the return?

A Well someone had to put my name on the return. I did not do it. So, I assumed that he did.

Q Is it your testimony then that simply because you assumed a return had been filed and you believed that your name, your signature was necessary to the return that you assumed from that that your name had been affixed to the return?

A Yes.

Q Mrs. Mitchell, did you ever see a pay check of your husbands?

A No. I did not.

Q Did you handle the money in your family?

A With regard to incidental household purchases, yes.

Q You had a joint bank account?

A Yes.

Q And you drew checks upon that account?

A Yes.

Q Did you see the balances in that account?

A Very rarely.

Q Mrs. Mitchell, you transferred certain property [23] to your sister. You transferred some real estate and you transferred a building and loan account which you had inherited from your mother.

Did you have an agreement with your sister to re-transfer that property to you?

A No. At the time I made the transfer under the advice of my attorney.

Q Did your sister transfer any of that property back to you prior to this deficiency being proposed?

A I have used some of the money from the building and loan account.

Q How much have you used?

A Twelve hundred dollars.

Q In what year did you use that money?

A In 1965-66.

MR. KIRKPATRICK:

Thank you, Mrs. Mitchell.
That's all.

CROSS EXAMINATION

BY MR. McARDLE:

Q Mrs. Mitchell, why did you separate from your husband?

A Well it's culmination of a long series of events. I would say the primary cause, the crux of the whole matter was his continuing financial irresponsibility over a very long period of time.

[24] Q Did you attend college?

A Yes, I did.

Q Are you a Teacher?

A Am I a Teacher?

Q Yes.

A Yes. I am.

Q Where do you teach now?

A I teach at the University of Southwestern Louisiana, at Lafayette.

Q And during some of the years here involved, you taught at St. Paul's; is that right?

A Yes.

Q Would you consider yourself a reasonably intelligent woman?

A I would think so.

Q Now, you stated that you were aware Income Tax Returns were required of individuals?

A Yes.

Q And you have testified that you never signed a return or any return any time during your marriage?

A Yes.

Q And that you never saw a return and what not. Did your husband gamble?

A I have reason to believe that he did. Yes.

Q Now he wasn't financially responsible in paying his [25] debts?

A That's right.

Q Could he afford gambling losses?

A No. We could not.

Q And did he borrow money to finance his gambling?

A I don't know.

He did borrow money but whether it was to finance gambling, I don't know.

Q Did he lie?

A Yes. Very often.

Q You consider gambling and borrowing money and lying not supporting the family an irresponsible act?

A Yes, I did.

Q You would consider your husband to be irresponsible?

A Yes, I would.

Q Did your husband sell the residence at 1255 Auburn Street in Monroe, Louisiana in 1956?

A Yes, he did.

Q Was that property in joint names?

A In joint names?

Q Was it your property and his property?

A Yes.

Q When that property was sold, did you sign the contract?

A (Pause). I honestly can't remember.

[26] Q Well you do realize if you have a legal document such as a transfer of a home and what not where your signature is required, that you are supposed to be the one to sign it. Is that right?

A Yes.

Q And you don't consider yourself irresponsible?

A No. I do not.

May I ask a question?

Is it not possible in Louisiana for a husband to transfer property without the wife's signature?

Q Well I would have to look up all of the law before I could answer that. I am sorry.

Did you ever ask your husband to see a retained copy of the Income Tax Return?

A Yes, I have.

Q Did he show it to you?

A No. He did not.

Q Then you never saw either a retained copy or an Income Tax Return?

A No.

Q You stated that you and your husband had a joint bank account. Is that correct?

A Yes.

Q And that you could draw checks from that bank account?

[27] A I could with some degree of risk.

Q But you did?

A What?

Q You did draw checks from that checking account?

A On occasions.

Q Did you ever see the stubs?

A You mean, the bank statement?

Q The statement or the checks?

A Or checkbook stubs?

Q Either one?

A Very rarely.

Q You did see them on occasions?

A On occasions. Not the stubs, the bank statement on occasions.

Q Did you ever go through any of these retained copies of checks for the cancelled checks or the stubs of the bank statement to determine if your incoming liabilities had been paid?

A No. I did not.

Q Did you ever contact the Internal Revenue to see if returns had been filed?

A Well it never occurred to me to do that.

Q Well then, you never verified actually that your returns—never really attempted to verify if your returns had been filed?

[28] A No, I did not. But, may I say this; I assumed that—

Q Yes. I understand that.

Is it correct in July of 1960 that you were informed that no returns had ever been filed for the years '54 through 1960?

A That is correct.

Q Now this was July of 1960 and you were still living with your husband?

A Yes, I was.

Q At that time, did you file a return for the years involved?

A At that time did I—

Q After you found out Income Returns had not been filed for 1954 through 1959, did you then file Income Tax Returns for any of those years?

A No, I didn't.

Q Not even for 1959?

A I filed a return for 1960.

Q Yes.

But, in July of 1960 you found out 1959 Tax Returns had not bene filed; is that correct?

A Yes.

But, in July of 1960 you found out 1959 Tax Returns had not been filed; is that correct?

A Yes.

Q And after you found out you did not file a 1959 Income Tax Return; is that correct?

[29] A I had no idea that I could at that point.

Q Did you file one?

A I did not know. It did not occur to me to do so.

Q Now you stated that you inherited this real property from your mother that you transferred on December 23rd to your sister, Jane Isabell Goyne Sims?

A Yes.

Q You did that under advice of counsel?

A Yes.

Q Was that advice of counsel related to Income Tax?

A Yes.

Q In other words, he told you to get the property out of your hands so it could not be collected for Income Tax?

A At that time the Internal Revenue people from Shreveport were threatening to seize the property and to garnishee my salary. My attorney L. D. Knapper in Ruston advised me to transfer the property to my sister and so I did.

Q And you did this?

A Yes.

Q As you stated in your financial statement, without consideration?

A Yes.

Q Now Exhibit "L" is the financial statement that you prepared on February 1st, 1965, I believe.

Would you look at this?

[30] A Right here?

Q Yes.

Now this was signed on February 1st, 1965, is that right, I believe?

Does that represent substantially the assets that you held on December 23rd, 1964; in other words, excluding the property you transferred to your sister on December 23rd, 1964?

You had no other property other than what is in that statement?

A That's right.

MR. McARDLE:

That's all, Your Honor.

THE COURT:

Mrs. Mitchell, what was your college or university?

THE WITNESS:

Louisiana Polytech Institute in Ruston.

THE COURT:

Your degree?

THE WITNESS:

BS in Home Economics.

THE COURT:

Home Economics.
What is it you teach now?

THE WITNESS:

I am now teaching Speech.

THE COURT:

Speech?

THE WITNESS:

Yes.

* * * *

[3] RECROSS EXAMINATION

BY MR. McARDLE:

Q Mrs. Mitchell, you could write letters to the Internal Revenue, could you not?

A It never occurred to me there was a need to write letters to the Internal Revenue because I did not know that returns had not been filed until I was so informed in July of 1960.

Q You did not know that they had been filed either?

A No. But I had no reason to believe that they had not been.

MR. McARDLE:

That's all.

MR. KIRKPATRICK:

I have no further questions, Your Honor.

* * * *

TAX COURT OF THE UNITED STATES

Docket No. 6740-66
Docket No. 6741-66

Filed: January 16, 1968

ANNE GOYNE MITCHELL,
JANE ISABELL GOYNE SIMS, PETITIONERS

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

SECOND SUPPLEMENTAL STIPULATION OF FACT

IT IS HEREBY STIPULATED that, for the purpose of this case, the following statement may be accepted as fact and the exhibit referred to herein and attached hereto is incorporated in this stipulation and made a part hereof:

38. On September 18, 1961 Anne Goyne Mitchell renounced the Community of Acquets and Gains formerly existing between herself and Emmett Leon Mitchell, Jr.

39. Attached hereto and marked Exhibit R is the Act of Renunciation of Community filed for Record in Conveyance Book 84 at Page 371 on September 19, 1961, Lincoln Parish, Louisiana.

(Signed) PAUL K. KIRKPATRICK, JR.

Paul K. Kirkpatrick, Jr.
Counsel for Petitioners
1000 Ouachita Bank
Monroe, Louisiana 71201

(Signed) LESTER R. URETZ

Lester R. Uretz
Chief Counsel
Internal Revenue Service

EXHIBIT R

STATE OF LOUISIANA
PARISH OF LINCOLN

RENUNCIATION OF COMMUNITY

BE IT KNOWN AND REMEMBERED, That on this 18th day of September, 1961,

BEFORE ME, the undersigned Notary Public in and for Lincoln Parish, State of Louisiana, and in the presence of the undersigned legal and competent witnesses:

PERSONALLY CAME AND APPEARED, ANNE GOYNE MITCHELL, a resident of Lincoln Parish, Louisiana, who has been married but once and then to Emmett Leon Mitchell, Jr., from whom she has been judicially separated, who declared that:

She was judicially separated from Emmett Leon Mitchell, Jr., on September 14, 1961, by Judgment rendered in the Third Judicial District Court of Louisiana in and for Lincoln Parish, in proceedings numbered 18094, Civil Docket, styled "Anne Goyne Mitchell vs. Emmett Leon Mitchell, Jr."

Appearer desires and is entitled to exonerate herself from the debts contracted during the marriage of Appearer and Emmett Leon Mitchell, Jr.

In accordance with the laws of the State of Louisiana, and particularly Articles 2410 and 2415 of the Revised Civil Code of Louisiana, Appearer has and does hereby and herewith renounce the legal partnership of the Community of Acquets and Gains that formerly existed between her and Emmett Leon Mitchell, Jr.

Appearer declared that she has not done or performed any acts whatsoever indicating an acceptance of said Community of Acquets and Gains.

IN WITNESS WHEREOF, This Act of Renunciation of Community has been executed by ANNE GOYNE MITCHELL in the presence of the undersigned legal

and competent witnesses and Notary Public in Ruston, Lincoln Parish, Louisiana, on the day, month and year first hereinabove written, after due reading of the whole.

ATTEST:

/s/ GLENDA LAUTER

/s/ ANNE GOYNE MITCHELL
Anne Goyne Mitchell

/s/ L. D. NAPPER
Notary Public in and for
Lincoln Parish, Louisiana

IN THE TAX COURT OF THE UNITED STATES

Docket Nos. 6740-66, 6741-66

Filed January 27, 1969

ANNE GOYNE MITCHELL, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

JANE ISABELL GOYNE SIMS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

1. *Held*, that under the community property laws of Louisiana a wife has a present, vested interest in the income of the community and is therefore under a duty to make either a single or a joint return, and is liable for the tax on one-half of community income; and this is so, even though the wife subsequently renounces the community of acquets and gains and takes nothing therefrom. *Held, further*, that wife's failure to file a return was without reasonable cause and her failure to pay the tax was negligent. Determined penalty for underpayment of estimated tax is mandatory since statu-

tory exceptions are not applicable, and such determination is upheld.

2. Parties agree that a prior assessment against wife and her husband was invalid and void as against wife. *Held*, the thrust of sec. 6404, I.R.C. 1954, is permissive, not mandatory, and respondent was not required to abate void assessment before making determinations herein.

3. *Held*, liability for tax on one-half of Louisiana community income is upon wife, and consequently her gratuitous transfer of her separate property to her sister, which transfer left her insolvent, makes the sister liable as a transferee.

Paul K. Kirkpatrick, Jr., for the petitioners.

Bruce A. McArdle, for the respondent.

FORRESTER, *Judge:* In these consolidated cases respondent has determined the following deficiencies in identical amounts against Anne Goyne Mitchell, petitioner in docket No. 6740-66, and against Jane Isabell Goyne Sims, petitioner in docket No. 6741-66, as transferee of the assets of Anne Goyne Mitchell:

Year	Income tax	Sec. 6651(a)	Sec. 6653(a)	Sec. 6654
1955	$ 323.00	$ 80.75	$ 16.15	0
1956	1,267.73	316.93	63.39	$ 35.49
1957	453.00	113.25	22.65	12.68
1958[1]	1,750.71	425.02	87.54	47.00
1959	871.34	173,24	43.57	17.27
	4,665.78	1,109.19	233.30	112.44

[1] For the years 1958 and 1959 credit has been allowed for $50.65 and $178.37, respectively. These amounts represent withholding from wages.

FINDINGS OF FACT

General

Some of the facts have been stipulated and are so found. The stipulation and exhibits attached thereto are incorporated herein by this reference.

Petitioner Anne Goyne Mitchell (hereinafter sometimes referred to as Anne) and petitioner Jane Isabell Goyne Sims (hereinafter sometimes referred to as Jane)

each resided at Ruston, La., at the time of the filing of their respective petitions herein. Anne and Jane are sisters.

The issues for determination in docket No. 6740-66 are: (1) Whether Anne, on the basis of her interest in community property under Louisiana law, is liable for income taxes on a one-half portion of the community income for the taxable years 1955 through 1959, inclusive, and additions to the tax thereto under sections 6651(a),[1] 6653(a), and 6654; (2) whether joint and several assessments that were void and invalid against Anne for Federal income taxes and additions thereto for the years 1954 through 1959, and not abated by the respondent, prevented determination of the deficiency herein; and (3) whether Jane (docket No. 6741-66) is liable as Anne's transferee for the deficiencies determined against her.

For convenience and clarity, we shall deal with each of the above issues separately.

Issue 1. Liability for One-half of the Community Income

FINDINGS OF FACT

On or about September 22, 1946, Anne married Emmett L. Mitchell, Jr. (hereinafter sometimes referred to as Emmett). Anne and Emmett were divorced on October 11, 1962.

During the existence of the marriage between Anne and Emmett, all of the income realized by either party was community income. Throughout the marriage of Anne and Emmett, finances were a constant source of trouble and controversy. At no time during the course of their marriage did Anne see her husband's paycheck or know how much money he made. Although Anne and Emmett had a joint bank account, and although Anne, with some degree of risk, drew checks on this account, she was rarely aware of the balances therein.

Sometime in or after 1952, while Anne and Emmett were residing at Monroe, La., Emmett rented a post

[1] All references herein are to the Internal Revenue Code of 1954, unless otherwise stated.

office box and retained the only key. Subsequent to the rental of the post office box, no mail was delivered to the Mitchell's home. When the Mitchells moved to Ruston, La., in 1956, Emmett again rented a post office box, and Anne was only aware of those bills and bank statements that Emmett chose to bring home. Emmett was financially irresponsible and Anne frequently attempted to bring to his attention those obligations she was aware of and that "needed to be taken care of in a financial way."

Anne was aware of her husband's fiscal irresponsibility, and repeatedly questioned him each year about the preparation of income tax returns. She believed that Emmett would file returns because of the consequences if he did not, which she assumed "would be immediate," but she was concerned about the returns being filed on time. Anne was led to believe that income tax returns were filed each year, because Emmett told her about getting help from Mr. Albritton, who was an accountant in Farmerville, Emmett's hometown; and securing the additional money allegedly needed to pay the taxes. Anne assumed not only that returns had been filed but that her signature had been affixed thereto by her husband. No income tax returns, however, were filed by either Anne or Emmett for the taxable years 1954 through 1959.

During 1955 and 1956 Anne was employed as a teacher by St. Paul's Methodist Church, receiving as salary (her community one-half) $1,350 and $750 respectively. Her actual receipts in such years were $2,700 and $1,500.

As a result of Emmett's continuing financial irresponsibility, Anne and Emmett began living separate and apart in July 1960. On or about August 4, 1961 Anne filed suit for separation from bed and board against Emmett, praying that, under Louisiana law, she be allowed to accept the community of acquets and gains with benefit of inventory. She was granted a separation from bed and board *a mensa et thoro*, against Emmett by default, on or about September 14, 1961. On September 18, 1961, she renounced the community of acquets and gains formerly existing between herself and Em-

mett, and on or about October 11, 1962, she was granted a judgment of divorce *a vinculo matrimonii*.

Upon the dissolution of the community of acquets and gains between Anne and Emmett, she received neither a distribution of community property nor a property settlement. Respondent, in his notice of deficiency, determined deficiencies against Anne for one-half of the community income for the tax years 1955 through 1959, and additions thereto under sections 6651(a), 6653(a), and 6654.

OPINION

In the case before us we are asked to decide whether in Louisiana, a community property State, one spouse is liable for the tax on one-half of all the income of the community irrespective of whose efforts produced the income for the community. In other words, in the absence of joint returns *must* one Louisiana spouse report one-half of the community income even though such income was earned by the efforts of the other spouse.

We hold that each spouse in Louisiana is responsible for tax on one-half of the community income regardless of whose efforts produced it.

In 1930, the U.S. Supreme Court decided that the community property laws in the States of Washington, Arizona, Texas, and Louisiana "entitled [a husband and wife] to file separate returns each treating one-half of the community income as his or her respective income." [2] *Poe* v. *Seaborn*, 282 U.S. 101 (1930); *Goodell* v. *Koch*, 282 U.S. 118 (1930); *Hopkins* v. *Bacon*, 282 U.S. 122 (1930); *Bender* v. *Pfaff*, 282 U.S. 127 (1930).

In *United States* v. *Malcolm*, 282 U.S. 792 (1931), the Court of Appeals for the Ninth Circuit had requested instructions from the Supreme Court on the following questions of law:

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[2] For almost 18 years income earned by a spouse who was domiciled in a community property State enjoyed the tax benefits of income splitting. In 1948 Congress, realizing the patent inequities between the marital unit in a community property State and a common-law State, amended the 1939 Internal Revenue Code by adding what is presently sec. 6013.

1. Under the applicable provisions of the Revenue Act of 1928 must the entire community income of a husband and wife domiciled in California be returned and the income tax thereon be paid by the husband?

2. Has the wife, under § 161(a) of the Civil Code of California such an interest in the community income that she should separately report and pay tax on one-half of such income?

In a per curiam opinion the Supreme Court answered the first question "no" and answered the second question "yes," citing *Poe* v. *Seaborn, supra; Goodell* v. *Koch, supra;* and *Hopkins* v. *Bacon, supra.*

Although *Poe* v. *Seaborn* and the related community property cases decided in 1930 stated that a husband and wife were entitled to file joint returns, it wasn't until our decision in *Paul Cavanagh,* 42 B.T.A. 1037 (1940), affd. 125 F. 2d 366 (C.A. 9, 1942), that it was decided she had a duty to return one-half of the community income. In *Cavanaugh,* we interpreted both the decision of *United States* v. *Malcolm, supra,* and section 22(a) of the 1934 Revenue Act (now sec. 61) to hold that a wife in California could not, *at her option,* return one-half of the income of the community, stating at pages 1043-1044:

> Gross income, as defined in section 22(a) of the Revenue Act of 1934, 48 Stat. 680, ch. 277, includes "income derived from * * * dealings in property, whether real or personal, growing out of the ownership or * * * interest in such property, * * * or gains or profits and income derived from any source whatever * * *." Such income must be reported by the individual to whom the statute attributes it. Clearly, therefore, the petitioner's wife is taxable on one-half of the community income. She is the owner thereof, although not entitled to present possession. This appears to be the inescapable conclusion to be drawn from the Supreme Court's opinion in the *Malcolm* case, *supra.*

> Consequently, there is no longer the situation whereunder the wife may at her option return one-half of the income. Since she now must do so, it follows that the petitioner is taxable only on the other half of the entire community property. Therefore, as to the second issue in this proceeding the Board holds in favor of the petitioner.

Again in *Marjorie Hunt*, 22 T.C. 228 (1954), we held, under the community property laws of California, that a spouse was liable for taxes on her one-half of the community income.

In the instant case we are concerned with the community property laws of Louisiana. Petitioners argue that: (1) Under Louisiana community property laws the wife does not have a sufficient interest in the community property to make her liable for tax on one-half of its income; (2) Federal income taxes are community debts for which the husband is liable and a wife who renounces the community of acquets and gains is not liable for income taxes on community property; and (3) it would be unconstitutional to collect the community's taxes from a spouse who neither received community income nor voluntarily assumed the indebtedness.

We recognize that under the Louisiana community property system decisions may be found supporting the proposition that a wife has only an expectancy in the community property. See "Nature of the Wife's Interest During the Existence of the Community," 25 La. L. Rev. 159, 179-180 (1964); however, since the decision of *Phillips* v. *Phillips*, 160 La. 813, 107 So. 584 (1926),[3] the weight of authority in Louisiana has favored an ownership concept. *Bender* v. *Pfaff*, *supra*. We deem it proper to follow this authority. See *Commissioner* v. *Estate of Bosch*, 387 U.S. 456 (1967).

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[3] In this case the Supreme Court of Louiisana said, 107 So. at 588: "The wife's half interest in the community property is not a mere expectancy during the marriage: * * * The title for half of the community propery is vested in the wife the moment it is acquired by the community * * *, even though it be acquired in the name of only one of them."

We think that the laws of Louisiana are overwhelming in their characterization of the wife's interest as more than a mere expectancy. The Louisiana Civil Code provides, *inter alia*, that "Every marriage • • • superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary";[4] that a wife may bring an action against the heirs of her husband for a fraudulent disposition of the common property;[5] that she may petition for a separation of property when, due to her husband's mismanagement, her dowry is in danger or when, because of the disorderly conduct of her husband's affairs, she believes that his estate may not be sufficient to meet her rights and claims.[6]

We find that petitioners' position on this point is untenable and accordingly we hold that in Louisiana a wife has such rights, claims, and powers in the property of the marital community as are equivalent to ownership, and that she is responsible for the tax on one-half of the community income.

Petitioners contend that Anne's renunciation of the community of acquets and gains, on September 18, 1961, exonerated her from liability for Federal income taxes. In support of such contention they refer us to articles 2410 and 2411[7] of the Louisiana Civil Code; *Stuffler* v.

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[4] La. Civ. Code Am. art. 2399 (West 1951). *Messersmith* v. *Messersmith*, 229 La. 495, 86 So. 2d 169 (1956).

[5] La. Civ. Code Ann. art. 2404 (West 1951). *Thigpen* v. *Thigpen*, 231 La. 206, 91 So. 2d 12 (1956).

[6] La. Civ. Code Ann. art. 2425 (West 1951). *Brown & Learned* v. *Smyth*, 40 La. Ann. 325, 4 So. 300 (1888).

[7] Art. 2410. Exoneration of wife or heirs by renunciation of community.

Art. 2410. Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains.

Art. 2411. Rights of renouncing wife.

Art. 2411. The wife, who renounces, loses every sort of right to the effects of the partnership or community of gains.

But she takes back all her effects, whether dotal or extradotal.

Puckett, 30 La. Ann. 811 (1878); and *Brassac* v. *Ducros*, 4 Rob. 335 (1843).

These cases and statutes stand for the proposition that a wife and her heirs or assigns may "exonerate themselves from the *debts contracted* during the marriage by renouncing the partnership or community of gains." (Emphasis supplied.)

The complete answer is that the income tax is not a *debt created by contract*, *Bender* v. *Pfaff*, 38 F. 2d 649 (C.A. 5, 1930), and further, that Anne's renunciation came long after her liabilities for the annual income taxes here in issue had attached. The wife in Louisiana does not have an option to assume the tax liability resulting from the income of the community. *Smith* v. *Donnelly*, 65 F. Supp. 415, 417 (E.D. La. 1946); *Saenger* v. *Commissioner*, 69 F. 2d 633 (C.A. 5, 1934), affirming 28 B.T.A. 377 (1933); *Commissioner* v. *Hyman*, 135 F. 2d 49 (C.A. 5, 1943), affirming 46 B.T.A. 992 (1942).

Petitioners suggest that it would be unconstitutional to collect the community's taxes from a spouse who neither received community property, nor voluntarily assumed the indebtedness.

We are not unmindful that the Federal tax obligations of a wife in a community property State may be greater than those of her sister in a common-law State. But, this is not always the case for we hold only that the wife in a community property State must account for one-half of the community income, regardless of whose efforts produced such income.

Over a third of a century has elapsed since the Supreme Court decided *Poe* v. *Seaborn*, *supra*, wherein the Court, in passing upon the constitutional aspects of splitting community income, stated at pages 117-118:

> Finally the argument is pressed upon us that the Commissioner's ruling will work uniformity of incidence and operation of the tax in the various states, while the view urged by the taxpayer will make the tax fall unevenly upon married people. This argument cuts both ways. When it is remem-

> bered that a wife's earnings are a part of the community property equally with her husband's, it may well seem to those who live in states where a wife's earnings are her own, that it would not tend to promote uniformity to tax the husband on her earnings as part of his income. The answer to such argument, however, is, that the constitutional requirement of uniformity is not intrinsic, but geographic. * * * [citations] And differences of state law, which may bring a person within or without the category designated by Congress as taxable, may not be read into the Revenue Act to spell out a lack of uniformity. * * *

We find no reason why the constitutional precepts of *Poe* v. *Seaborn*, that were applicable in permitting community income to be split, should not be applicable in requiring the spouse to report and pay her tax on one-half of the community income.

In addition to the deficiency for one-half of the tax on the community income, respondent determined penalties against Anne under sections 6651(a) and 6653(a) for failure to file a tax return and for failure to pay the tax. Section 6651(a) provides for a 5-percent penalty per month of the tax due, but not in excess of 25 percent for failure to file a tax return "unless it is shown that such failure is due to reasonable cause and not due to willful neglect." We do not find willful neglect in the instant case; however, it is well settled that a penalty under section 6651(a) is avoided only when there is, in addition to the absence of willful neglect, a reasonable cause. *Charles E. Pearsall & Son*, 29 B.T.A. 747, 749 (1934).

Petitioners argue that Anne had reasonable cause and that she was "not negligent unless she was under some affirmative duty to doubt her husband and independently verify his statements." We are sympathetic to Anne's plight; however, we believe that she did not have reasonable cause. Anne neither saw the returns nor signed her name to them. It was certainly not reasonable simply to assume that her husband had signed her name to

the returns, especially wh
to verify the existence of
Leo Sanders, 21 T.C. 101
2d 629 (C.A. 10, 1955), c
(1956):

> A wife required to
> come of her husband
> or who joins in a j
> responsibility for del
> relied entirely upon
> qualified tax authorit
> be frustrated in the
> [6651(a)].

en she did not even attempt
said returns. As we said in
2, 1020 (1954), affd. 225 F.
ertiorari denied 350 U.S. 967

file a return because of in-
n a community property State
oint return can not shed the
inquency by saying that she
her husband, not a specially
y; otherwise Congress would
purpose behind section • • •

We find that Anne is a
posed under section 6653(
a 5-percent penalty on a
resulting from an underpa
ligence or intentional disr
(but without intent to de
under this section is upon
though only part of the
gence,[8] and the burden of
underpayment was due to
Terry C. Rosano, 46 T.C.

lso liable for the penalties im-
a). This section provides for
deficiency when said deficiency,
ayment, is due either to "neg-
gard of rules and regulations
fraud)." The penalty imposed
the total underpayment even
nderpayment is due to negli-
proving that no part of the
negligence is upon petitioner.
681, 688 (1966).

Anne was under a duty
joint income tax returns,
pay a tax on her comm
income shown on these re
failure to pay income ta
to file returns and we h
prepared and signed her

to make either individual or
secs. 6012 and 6013, and to
unity one-half of the taxable
eturns, secs. 1 and 2. Anne's
xes resulted from her failure
ave found that Anne demon-
in assuming that her husband
ame to these putative returns.

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[8] SEC. 6653. FAILURE TO PAY TAX.

(a) NEGLIGENCE OR INTENTIONAL DISREGARD OF RULES AND REGULATIONS WITH RESPECT TO INCOME OR GIFT TAXES.—If any part of any underpayment • • • is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

Anne's conduct in failing to file income tax returns was also responsible for her failure to pay income taxes for the years in question. Therefore, we hold that Anne was negligent, and is liable for the 5-percent penalty on her share of the community income.

Respondent in his notice of deficiency determined that Anne was liable for additions to the tax under section 6654, which provides for an addition to the tax in the case of any underpayment of estimated tax by an individual. This section is mandatory unless certain exceptions (none of which are applicable in the instant case) relating to prior year's taxes, or payments, are complied with. It does not provide relief upon a showing of reasonable cause, lack of willful neglect, or extenuating circumstances. *Estate of Barney Ruben*, 33 T.C. 1071 (1960).

Anne does not come within any of the exceptions to section 6654 and is therefore responsible for additions to the tax under that section.

Issue 2. Existence of a Deficiency

FINDINGS OF FACT

Emmett and Anne did not file Federal income tax returns, either jointly or separately, for any of the taxable years 1954 through 1959. Form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," covering these 6 taxable years was executed by Emmett on or about January 11, 1961. The execution of this form by Emmett permitted the Commissioner to make an assessment without complying with the time and notice (90 day) requirements of section 6213. The Federal income tax liabilities indicated on said Form 870 for all of the said taxable years were determined pursuant to the rates applicable to joint return filings. Predicated on the Form 870 executed by Emmett, Federal income taxes and penalties were jointly assessed on March 10, 1961, against both Anne and Emmett for the taxable years 1954 through 1959, inclusive.

The March 10, 1961, assessments were made without notice to, or the knowledge of Anne. Anne neither granted Emmett actual or implied consent nor authority or power to legally bind her to the Form 870. Anne neither acquiesced nor consented to being a participant or partner in the Form 870; nor did she consent or acquiesce to being obligate or bound by such Form 870 or any subsequent assessments thereunder.

Respondent concedes that the above joint and several assessments of Federal income taxes and additions to the tax, relative to the years 1954 through 1959 were invalid and void as against Anne.

Form 870, "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment," covering the taxable year 1954 was executed by Anne on August 4, 1965. Predicated on such waiver, the Federal income tax, penalties, and interest were individually assessed against her for the taxable year 1954 on August 16, 1965, in the amount of $550.87. On December 30, 1966, Anne filed a claim for refund for the above amount and on July 25, 1967, brought a refund action in the U.S. District Court for the Western District of Louisiana based upon her claim, which action is still pending.

On September 27, 1967, procedures of abatement were executed by the Internal Revenue Service with respect to the assessment of Federal income taxes, penalties, and interest, made on March 10, 1961, as it applied, in entirety, to Anne for the taxable years 1955 through 1959. On the same date, procedures of abatement were also executed by the Internal Revenue Service, with respect to the aforementioned assessment as it applied to Emmett, down to an amount which reflected the Federal income taxes, penalties, and interest against his one-half portion of the community income for the taxable years 1955 through 1959, inclusive.

OPINION

Petitioners argue that no deficiency exists under section 6211 (Definition of a Deficiency) because the re-

spondent failed to abate the assessment made against Anne on March 10, 1961, pursuant to the execution of the waiver agreement (Form 870) executed by her husband on January 11, 1961. Respondent agrees that the assessments made on March 10, 1961, were invalid and void as against Anne.

As we understand petitioners, it is their contention that the void assessment must be abated by the respondent under section 6404 before there can be a valid deficiency under section 6211, since no deficiency can exist if the determination of the tax due is less than the amount previously assessed. We disagree.

As we read both the statute and the regulations promulgated under section 6211 and 6404, we find that the Secretary or his delegate is not required to abate an invalid and void assessment in order to assert a deficiency. Of course there may be a question as to whether an assessment is invalid and void, but in the instant case petitioners and respondent are both in agreement on this point. "Section 6404 does not impose a duty on the District Director to abate improper assessments * * *. Its thrust is permissive, not mandatory." *Poretto* v. *Usry*, 295 F. 2d 499, 501 (C.A. 5, 1961).

The fact that the assessment may have been valid against Emmett is of no consequence in the instant case, when Anne neither consented to the execution of Form 870 nor authorized Emmett to act on her behalf. Cf. *Marie A. Dolan*, 44 T.C. 420 (1965).

We hold that a valid and proper determination was made herein as against Anne.

Issue 3. Transferee Liability

Findings of Fact

Anniebel Taylor Goyne (hereinafter sometimes referred to as Anniebel), mother of Anne and Jane, died on November 5, 1964. On December 23, 1964, Anne conveyed all of the real estate inherited by her from her mother, to Jane.

On November 14, 1964, $2,402.78 was transferred from the account of Anniebel with the Ruston Building & Loan Association, to Anne's account with that same association. On December 23, 1964, Anne withdrew $2,676.81, the balance of her account, from the Ruston Building & Loan Association, and transferred to her sister, Jane, $1,721.21.

The above transfers to Jane were made without consideration, and there was no agreement between Anne and Jane for any retransfer.

On February 1, 1965, Anne executed Form 433-AB ("Statement of Financial Condition and Other Information") showing assets of $2,250 and liabilities of $1,081.20, exclusive of the deficiencies determined herein. A supporting statement to such Form 433-AB reads in part:

> On December 23, 1964 [I] transferred to my sister, Mrs. Jane G. Sims, without consideration the following:
>
> I. My undivided one-half interest in the following real property which was acquired by inheritance from my mother in November, 1964:
>
> * * * *

Description:	Value of my one-half interest in mother's succession
Total value of real property	$9,550.00

> II. Cash in savings account in Ruston Building & Loan Association, Ruston, La., $1,721.21.
>
> The foregoing assets were transferred to my sister on the recommendation of my attorney who had just closed my mother's succession in November, 1964, approximately one month prior to receipt on December 19, 1964, of the Final Notice Before Seizure for 1954 income tax.
>
> Prior to closing my mother's succession, I discussed with my attorney the matter of the income

tax liability for 1954 through 1959. He advised that I could renounce my interest in the succession and thus pass my interest in mother's estate directly to my two children. However, as it had been over two years since I was contacted by Internal Revenue Agent, Deuel C. Smith, in regard to signing with my former husband on his Offer in Compromise, and I had heard nothing since, he felt that the matter was settled and therefore put me in possession. Then, after I received the Notice on December 19, 1964, he felt that to protect my interest, the foregoing assets should be transferred which would leave me in the same financial status as if I had renounced my interest in mother's estate.

OPINION

Respondent in his notice of deficiency to Jane, determined that she was liable as a transferee of property from Anne for deficiencies in income taxes and the additions thereto determined against Anne and the taxable years 1955 through 1959.

Petitioners do not contest any of the basic facts, or Jane's liability as a transferee, except to argue:

> [Anne's] transfer was of her separate property. Since the liability for income taxes on the community income was a community debt which she [Anne] could not be required to satisfy out of her separate property, in view of her nonacceptance of the community; her transfer of separate property to Mrs. Sims cannot be said to * * * [constitute her] a transferee.

This is the identical argument made by the petitioners in issue 1, and we reject it for the reasons there expressed. Jane's liability as transferee will be computed in conformity with our holdings on the other issues.

Decisions will be entered under Rule 50.

DECISION

TAX COURT OF THE UNITED STATES

Filed: March 19, 1969

Docket No. 6740-66

ANNE GOYNE MITCHELL, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Pursuant to the opinion of the Court filed January 27, 1969, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there are deficiencies and additions to the tax due from the petitioner as follows:

		Addition to Tax		
Year	Income Tax	Sec. 6651(a) 1954 Code	Sec. 6653(a) 1954 Code	Sec. 6654 1954 Code
1955	$ 323.00	$ 80.75	$16.15	$ —
1956	1,267.73	316.93	63.39	35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.00
1959	871.34	173.24	43.57	17.27

/s/ BRUCE M. FORRESTER
Judge

Entered: Mar. 19, 1969

* * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either

party to contest the correctness of the decision entered herein.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Counsel for Petitioner

(Signed) RICHARD M. HAHN
Richard M. Hahn
Acting Chief Counsel
Internal Revenue Service

1957

Income Tax	$ 453.00
Addition to tax (Sec. 6651(a), 1954 Code)	113.25
Addition to tax (Sec. 6653(a), 1954 Code)	22.65
Addition to tax (Sec. 6654, 1954 Code)	12.68
Liability	$ 601.58

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

1958

Income Tax	$1,700.06
Addition to tax (Sec. 6651(a), 1954 Code)	425.02
Addition to tax (Sec. 6653(a), 1954 Code)	87.54
Addition to tax (Sec. 654, 1954 Code)	47.00
Liability	$2,259.62

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

1959

Income Tax	$ 692.97
Addition to tax (Sec. 6651(a), 1954 Code)	173.24
Addition to tax (Sec. 6653(a), 1954 Code)	43.57
Addition to tax (Sec. 6654, 1954 Code)	17.27
Liability	$ 927.05

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

/s/ BRUCE M. FORRESTER
Judge

Entered: Mar. 19, 1969

* * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Counsel for Petitioner

(Signed) RICHARD M. HAHN
Richard M. Hahn
Acting Chief Counsel
Internal Revenue Service

TAX COURT OF THE UNITED STATES

Docket No. 6741-66

Filed: March 19, 1969

JANE ISABELL GOYNE SIMS, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

DECISION

Pursuant to the opinion of the Court filed January 27, 1969, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That the following statement shows the liabilities due from the petitioner as transferee of assets of Anne Goyne Mitchell, Ruston, Louisiana, transferor, for unpaid income taxes and additions to tax of the transferor for the taxable years 1955, 1956, 1957, 1958 and 1959:

1955

Income Tax	$ 323.00
Addition to tax (Sec. 6651(a), 1954 Code)	80.75
Addition to tax (Sec. 6653(a), 1954 Code)	16.15
Liability	$ 419.90

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

1956

Income Tax	$1,267.73
Addition to tax (Sec. 6651(a), 1954 Code)	316.93
Addition to tax (Sec. 6653(a), 1954 Code)	63.39
Addition to tax (Sec. 6654, 1954 Code)	35.49
Liability	$1,683.54

plus interest on the above liability as provided by law from December 23, 1964, to the date of payment.

TAX COURT OF THE UNITED STATES
WASHINGTON, D.C.

Docket No. 6740-66

Filed: June 16, 1969

ANNE GOYNE MITCHELL, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

NOTICE OF APPEAL

Notice is hereby given that Anne Goyne Mitchell hereby appeals to the United States Court of Appeals for the Fifth Circuit from the decision of this court entered on the 19th of March, 1969.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Hudson, Potts & Bernstein
1000 Ouachita National Bank Building

Counsel for Anne Goyne Mitchell

TAX COURT OF THE UNITED STATES
WASHINGTON, D.C.

Docket No. 6741-66

Filed: June 16, 1969

JANE ISABELL GOYNE SIMS, PETITIONER

versus

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

NOTICE OF APPEAL

Notice is hereby given that Jane Isabell Goyne Sims hereby appeals to the United States Court of Appeals for the Fifth Circuit from the decision of this court entered on the 19th day of March, 1969.

(Signed) PAUL K. KIRKPATRICK, JR.
Paul K. Kirkpatrick, Jr.
Hudson, Potts & Bernstein
1000 Ouachita National Bank Building

Counsel for Jane Isabell Goyne Sims

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 28163

ANNE GOYNE MITCHELL, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE

JANE ISABELL GOYNE SIMS, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE

Appeals From the Decisions of the Tax Court of the United States (Louisiana Case)

(June 23, 1970)

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

DYER, *Circuit Judge*: These appeals from the Tax Court involve the question of a wife's liability out of her separate property for federal income taxes on community income earned when she and her husband were residents and domiciliaries of Louisiana, a community property state. The Tax Court held that the wife is liable for the tax on one-half of all the community income regardless of whose efforts produced the income for the community and even though the wife did not file a return, renounced the community and received none of the community property upon the dissolution of the community. The Tax Court also held the wife liable for statutory penalties imposed by §§ 6651, 6653 and 6654 of the Internal Revenue Code of 1954.[1] The Court

[1] Penalties under § 6651(a) are imposed for failure to file a return, under § 6653(a) for negligent failure to pay taxes that are due, and under § 6654 for failure to file estimated tax returns and pay the estimated taxes.

further held the transferee of the wife's separate property liable for the taxes under § 6901 of the Code. We disagree on the initial question of the wife's liability for the taxes and therefore reverse on all issues.

Anne and Emmett Mitchell were married on September 22, 1946. During the taxable years in question they lived under the Louisiana community of acquets and gains. For the taxable years beginning January 1, 1955, and ending on December 31, 1959, neither Mrs. Mitchell nor her husband filed federal income tax returns. During 1955 and 1956 Mrs. Mitchell was employed as a teacher and received salaries of $2700 and $1500 for the respective years. Income taxes were withheld from this income. It was stipulated that during the years in question all the income earned by both Mrs. Mitchell and her husband constituted community income and the amount of this income is not in dispute. The Tax Court found as a matter of fact that Mrs. Mitchell did not know of her husband's finances and relied upon his assurances that their tax returns were timely filed and their taxes properly paid. She assumed that he signed her name to the income tax returns.

Mrs. Mitchell began living apart from her husband in July, 1960. On March 10, 1961, the Commissioner assessed income taxes and penalties against Mr. and Mrs. Mitchell. It was stipulated that Mrs. Mitchell did not receive or have knowledge of this assessment. On September 4, 1961, Mr. and Mrs. Mitchell were judicially separated and on September 18, 1961, Mrs. Mitchell renounced the community of acquets and gains pursuant to Article 2410 of the Louisiana Civil Code.[2] Mr. and Mrs. Mitchell were divorced on October 11, 1962.

In 1964 Mrs. Mitchell inherited an undivided interest in her mother's estate. On December 23, 1964, she transferred this interest to her sister, Mrs. Jane Sims, without consideration. Thereafter, on September 30, 1966,

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[2] Article 2410 provides: "Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains."

the Commissioner determined that additional deficiencies existed.

The Tax Court held that under the Louisiana community property system the wife has such rights, claims and powers in the property and income of the marital community as are equivalent to ownership. This ownership interest made Mrs. Mitchell liable for one-half of the tax due on the community income for the period in question. The Court held that her renunciation of the community did not affect the tax liability because it read Article 2410 of the Louisiana Code as allowing the wife to exonerate herself solely from contractual debts of the community, whereas the tax liability was imposed by law.

The Tax Court also held Mrs. Mitchell liable for the penalties imposed by § 6651(a) of the 1954 Code for failure to file tax returns for the years in question because she did not have reasonable cause to rely on her husband's assertions that he had filed the returns. Penalties under § 6653(a) were also assessed because the Tax Court held that she acted negligently in failing to pay taxes that were due. The Tax Court further imposed penalties under § 6654 for failing to file estimated tax returns and pay the estimated taxes for each of the years 1955 through 1959.[3]

It was stipulated by both parties in the Tax Court that if Mrs. Mitchell were liable out of her separate property then the transferee without consideration of

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[3] The Court determined the total liabilities for the years in question as follows:

Year	Income tax	Addition to tax		
		§ 6651(a)	§ 6653(a)	§ 6654
1955	$ 323.00	$ 80.75	$16.15	—
1956	1,267.73	316.93	63.39	$35.49
1957	453.00	113.25	22.65	12.68
1958	1,750.71	425.02	87.54	47.00
1959	871.34	173.24	43.57	17.27

plus interest on the above liabilities as provided by law from December 23, 1964, to the date of payment.

that property would likewise be liable. The Tax Court therefore found Mrs. Sims, the transferee, liable.

It is, of course, incumbent on us to examine Louisiana law to determine the nature and extent of the community interest owned by the wife because the state law determination of this interest is binding on federal courts in the adjudication of federal tax controversies. *Poe* v. *Seaborn*, 1930, 282 U.S. 101, 51 S. Ct. 58, 75 L. Ed. 239; *Bender* v. *Pfaff*, 1930, 282 U.S. 127, 51 S. Ct. 64, 75 L. Ed. 252; *see also Commissioner* v. *Estate of Bosch*, 1967, 387 U.S. 456, 87 S. Ct. 1776, 18 L. Ed. 2d 886, and *Commissioner* v. *Hyman*, 5 Cir. 1943, 135 F. 2d 49.

Under Louisiana law the wife has a present, vested ownership interest in one-half of the community property, including its income. *United States Fidelity and Guaranty Co.* v. *Green*, 252 La. 227, 210 So. 2d 328 (1968); *Phillips* v. *Phillips*, 160 La. 813, 107 So. 584 (1926). Because of this vested interest in the income the Commissioner contends that Mrs. Mitchell is liable individually, and out of her separate property, for income taxes on one-half of the community's income. However, the bare characterization of this ownership interest as vested is not determinative of the issue. Under the law of Louisiana the wife does not own the income in a separate capacity. She owns the income only derivatively through her one-half ownership interest in the community. It is the community which owns the income and owes the community debts. *Poe* v. *Seaborn*, *supra*; *Bender* v. *Pfaff*, *supra*; *Messersmith* v. *Messersmith*, 229 La. 495, 86 So. 2d. 169 (1956).

If the community owns the income it also owes the tax since it is axiomatic that income is taxed to the owner thereof. *Helvering* v. *Horst*, 1940, 311 U.S. 112, 61 S. Ct. 144, 85 L. Ed. 75. The Commissioner contends that the liability for income taxes is not a community debt. However, the Supreme Court of Louisiana held to the contrary in *Messersmith* v. *Messersmith*, *supra*, where the court said: "[A]ll sums expended for income tax * * * must be held to be debts of the community

and to be payable out of community funds." *Id.* at 176. *See also Tate* v. *Tate*, 12 So. 2d 506 (La. Ct. App. 1943). Note, *Creditor's Rights*, 25 La. L. Rev. 201 (1964). The question then is whether we should "look through" the community concept and hold the wife liable for a community debt because she is the owner of an interest in the community.

The wife does not have control or management of the community property until dissolution of the community. *Agar* v. *Agar*, 239 La. 941, 120 So. 2d 485 (1960) and this is true even if the husband is absent from the home. *Grandeson* v. *International Harvester Credit Corp.*, 223 La. 504, 66 So. 2d 317 (1953). During the existence of the community the husband can alienate the property without her consent. La. Civ. Code Article 2404; *Pitre* v. *Pitre*, 247 La. 594, 172 So. 2d 693 (1965). As a corollary of his almost exclusive control over the community property the nature of the wife's interest in the community is such that the burdens cannot, unless she expressly binds herself, be satisfied out of her separate property. La. Civ. Code Article 2403. It is only when the community is dissolved and she does not renounce the community that the nature of her interest becomes such that it can burden her separate property. *Beal* v. *Ward*, 13 La. App. 191, 127 So. 423, 1930. Therefore, since income taxes on community income are community debts, *Messersmith*, *supra*, the wife's renunciation of the community is not academic. Mrs. Mitchell was not attempting to relieve herself of a debt which she had already incurred, as the Government argues, but was avoiding the assumption of a liability which was the liability of the community and which was to be acquitted out of community funds.

Article 2403 of the Louisiana Civil Code establishes the principle that there are separate debts and community debts which must be acquitted out of the respective funds:

> [T]he debts contracted during the marriage enter into the partnership or community of gains, and must be acquitted out of the common fund, whilst

> the debts of both husband and wife, anterior to the marriage, must be acquitted out of their own personal and individual effects.

See First National Bank of Abbeville v. *Broussard*, 202 La. 315, 11 So. 2d 602 (1942). The Louisiana courts have made it crystal clear that the wife's interest in the community is such that she cannot be held liable out of her separate property for community debts. "[T]here are no principles more elementary, more fundamental, more firmly imbedded in the law of Louisiana, and more clearly understood, than the principle that the wife is not personally liable for a community debt * * *." *Smith* v. *Viser*, 117 So. 2d 673, 674 (La. Ct. App. 1960); *accord*, *Personal Finance, Inc.* v. *Simms*, 148 So. 2d 176 (La. Ct. App. 1962); *Brock Furniture Co.* v. *Carroll*, 86 So. 2d 715 (La. Ct. App. 1956).

Although the community is not a taxpayer the courts have recognized the underlying concept of the community as an entity in tax cases. *Commissioner* v. *Chase Manhattan Bank*, 5 Cir. 1958, 259 F. 2d 231; *see also Poe* v. *Seaborn, supra; Jefferson Lake Sulphur Co.* v. *Walet*, E.D. La. 1952, 104 F. Supp. 20, *aff'd* 202 F. 2d 433, *cert. den.* 346 U.S. 820 (1953). The Commissioner asserts that the entity concept is not pertinent because the community is similar to a partnership and the "pass through" provisions of partnership income taxation should apply. The community of acquets and gains, is, however, not similar to an ordinary commercial partnership because the wife may renounce it and thereby absolve herself of all debts of the community, retroactively. This difference was pointed out in *Brassac* v. *Ducros*, 4 Rob. 335, 339 (1843) where the Louisiana Supreme Court said:

> Such a partnership does exist in contemplation of law, but only, we apprehend, when she accepts the community; if she renounces it, the community is, as to her, as though it never existed, and everything done during the marriage in relation to the purchase or alienation of property must be considered as done by the husband alone.

The Commissioner relies on those United States Supreme Court cases[4] which held that the husband is not required to report the whole community income on his individual return as authority that the wife is liable for one-half of the taxes. This reliance is misplaced. *Bender* and *Poe* did not hold that the wife was *required* to report the income but rather that she had a sufficient interest in the community income to entitle her to report one-half of the community income. The real significance of the finding of a vested ownership in the wife in *Bender* was not to make her separately liable but to rebut the Commissioner's reliance there on cases such as *Lucas* v. *Earl*, 1930, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731, where the factor of who earned the income was held determinative of who owed the tax.

The holding of *Bender* is consistent with Louisiana law. Where the husband and wife are living under the community of acquets and gains the wife may assume the liabilities of the community and be liable for such assumption out of her separate property. La. R.S. 9:103 (1950); *Friendly Loans, Inc.* v. *Morris*, 142 So. 2d 810 (La. Ct. App. 1962). But to extend *Bender* to *require* the wife to report the income would be destructive of the Louisiana system of community property without any clear statutory authorization. This we refuse to do.

The case at hand is also distinguishable from those cases cited by the Commissioner where the wife, after having signed a return, was held liable for one-half of the income tax. *E.g.*, *United States* v. *Malcolm*, 1931, 282 U.S. 792, 51 S. Ct. 184, 75 L. Ed. 714; *Commissioner* v. *Hyman*, 5 Cir. 1943, 135 F. 2d 49; *Saenger* v. *Commissioner*, 5 Cir. 1934, 69 F. 2d 633. Since the wife in those cases had signed a return she had assumed the liability for the tax. Therefore the issue of her liability for the tax was not in dispute.[5]

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[4] *Poe* v. *Seaborn, supra; Bender* v. *Pfaff, supra.*

[5] We are not convinced that *Smith* v. *Donnelly*, E.D. La. 1946, 65 F. Supp. 415 decided otherwise. There was no mention in *Smith* of a return but the court cited *Saenger* and *Hyman* as the only authority for its sweeping conclusion that the wife is liable for one-half of the income tax of the community.

Mrs. Mitchell might have been held liable for the income taxes if she had accepted the benefits upon the dissolution of the community. She elected, however to renounce the community pursuant to Article 2410 of the Louisiana Civil Code which specifically provides that such renunciation exonerates her from all "debts contracted during the marriage." We are not persuaded by the Commissioner's assertion that the term "debts contracted during the marriage" should be limited to debts created by contract. In discussing the term "debts contracted" Planiol, 3 *Civil Law Treatise*, Part 1, § 1086 (1959) would read the term to mean debts incurred by any means, whether contract, tort or statute. This interpretation of the term is more in keeping with the purpose of the renunciation provision—to protect the wife's separate property from onerous debts of the community which the husband incurred and did not satisfy, factors over which the wife had no control.

Under Louisiana law, absent the willingness of the husband to divulge to the wife information concerning the financial status and affairs of the community, she has no way of knowing nor means to compel him to inform her of the community's assets, liabilities or income. She could neither prepare a return showing the community income nor pay the tax. She has no power to guarantee that the community will be solvent enough to satisfy the tax liability.[6] As a result, if she is held

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[6] Article 2404 of the Louisiana Civil Code requires that in order for the wife to have an action against the husband for fraudulent disposition of the community assets said disposition must be made with an "intent to injure the wife." As the United States Supreme Court pointed out in *Fernandez* v. *Wiener*, 1945, 326 U.S. 340, 349, n. 7, 66 S. Ct. 178, 90 L. Ed. 116: "Where the husband has aliened some part of the community in fraud of his wife's rights, she or those representing her have an action for reimbursement against the husband or his representatives upon the termination of the community, *but not before*, *Guice* v. *Lawrence*, 2 La. Ann. 226, 228. The fraud required for an action of this kind seemingly must be intentional and *the motive for the transaction.*" [Emphasis supplied.]

See also Thigpen v. *Thigpen*, 231 La. 206, 91 So. 2d 12 (1956). Although the wife may obtain a judicial separation of property

liable for the income taxes, she may have no property with which to satisfy the debt unless the community is dissolved in a solvent state, a factor over which she has no control. Even if the community is solvent it is impossible for the wife to reach its assets until its dissolution because under § 2403 of the La. Civ. Code a separate debt (which is what the Commissioner is asserting against Mrs. Mitchell) may not be acquitted out of the community fund. Thus, as pointed out in *U.S. v. Robbins*, 1926, 269 U.S. 315, 328, 46 S. Ct. 148, 70 L. Ed. 285, "[T]he fund taxed, while liable to be taken for his debts, is not liable to be taken for the wife's * * * so that the remedy for her failure to pay might be hard to find." If Mrs. Mitchell had not fortuitously inherited property from her mother she would not have obtained any assets with which to satisfy the tax liability and the problem recognized in *Robbins* would have been real —Mrs. Mitchell would be liable for taxes for which she would be powerless to obtain the funds to pay.

Our holding does not leave the Commissioner without recourse. Under Louisiana law the husband is liable for the community debts that may be satisfied both out of the community and out of his separate property. *Poindexter* v. *Louisiana & A. Ry. Co.*, 170 La. 521, 128 So. 297 (1930); *Rouchon* v. *Rocamora*, 84 So. 2d 873 (La. Ct. App. 1956); *Gosserand* v. *Monteleone*, 164 La. 397, 113 So. 889 (1927). The rationale for this liability is not that the husband's ownership interest in the community should subject him to such liability but rather that as head and master of the community he should be liable for the debts he has incurred with respect to community property, and that it would be inequitable to require the creditor to distinguish between the community property and the husband's seperate property. Note, *Creditor's Rights*, 25 La. L. Rev. 201 (1964).

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without dissolution of the marriage this remedy is difficult to obtain and somewhat illusory because the wife must show prior mismanagement and thus the funds may have already been dissipated.

The Commissioner's contention that Mrs. Mitchell incurred the statutory penalties under §§ 6651, 6653 and 6654 of the Code fails because she was under no duty to file a return under § 6012 of the Code since she had no separate income.

Since Mrs. Mitchell owes no tax obviously her transferee, Mrs. Jane Sims, does not either.

Reversed.

SIMPSON, Circuit Judge, dissenting:

I respectfully dissent.

I would affirm the Tax Court upon the basis of its opinion, reported at 51 T.C. No. 62.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1969

No. 28163
T.C. Docket Nos. 6740-66 and 6741-66

ANNE GOYNE MITCHELL, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE

JANE ISABELL GOYNE SIMS, PETITIONER-APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE

Appeals From the Decisions of the Tax Court of the United States (Louisiana Case)

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the transcript of the record of the Tax Court of the United States, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the decisions of the said Tax Court in this cause be, and the same are hereby reversed.

It is further ordered that respondent-appellee pay to petitioners-appellants, the costs on appeal to be taxed by the Clerk of this Court.

SIMPSON, *Circuit Judge*, dissenting.

Issued as Mandate: June 23, 1970.

Section A
CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

66-884

D. C. Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO VERSUS METROPOLITAN LIFE INSURANCE COMPANY, AND UNITED STATES OF AMERICA	For plaintiff: Patrick M. Schott, TA Reuter, Reuter & Schott 1607 NBC Bldg. For defendant: Ernest N. Morial Asst. U.S. Atty. and INTERVENOR Phelps, Dunbar, Marks, Claverie, & Sims Richard C. Brown, T. A. 1300 Hibernia Bank Bldg., New Orleans, La. For: Metropolitan Life Insurance Co.,

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
.S. 5 mailed	Clerk								
.S. 6 mailed	Marshal								
asis of Action:	Docket fee								

OVERSIZE PAGE – SEE NEXT FRAME FOR REMAINDER OF PAGE

OF AMERICA

For defendant:

Ernest N. Morial
Asst. U.S. Atty.

and INTERVENOR

Phelps,Dunbar,Marks,Claverie, & Sims
Richard C. Brown, T. A.
1300 Hibernia Bank Bldg., New Orleans, La.
For: Metropolitan Life Insurance Co.,

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
.S. 5 mailed	Clerk								
.S. 6 mailed	Marshal								
Basis of Action:	Docket fee								
O RECOVER INSURANCE POLICY	Witness fees								
Action arose at:	Depositions								

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DATE	PROCEEDINGS	
12/29/66	Flg. petition for removal of suit by U.S. of America from the Civil District Court for the Parish of Orleans, State of Louisiana to the United States District Court for the Eastern District of Louisiana, Orleans Parish, Louisiana; complete transcript annexed.	1
12/29/66	Flg. notice of removal by U.S. of America.	2
5/8/67	Flg. motion of U.S. of America to intervene; notice of hearing on 5/24/67.	3
5/8/67	Flg. motion of U.S. of America to dismiss; notice of hearing on 5/24/67.	4
5/19/67	Flg. Motion and ORDER for Continuance. Ent. 6/2/67. Issg. Notice. Continued until 6/7/67 motions for leave to intervene and dismissal.	
6/7/67	Hearing and Order that the motion of the United States to intervene and to dismiss is hereby granted. HWC Ent. 6/12/67. Issg. notice	5
	MULTIPLE PARTY DISMISSAL	6
1/2/68	Flg. ANSWER to Petition in Intervention of Mrs. Frances Angello	7
4/30/68	Flg. interrogs propounded to the plaintiff by the intervenor.	8
4/30/68	Flg. intervenor's request for admissions from the plaintiff.	9
5/2/68	Flg. Motion for summary judgment on behalf of defendant, Metropolitan Life Insurance Company; and ORDER(HWC 5/6/68), granting the summary judgent of Metropolitan, depositing the sum of $1,913.88 into the Registry of Court, etc. Ent. 5/6/68. issg notices. Statement of facts and memo annexed.	10
	CLOSED CASE	
	MULTIPLE PARTY DISMISSAL	
5/10/68	Flg. Motion and ORDER(HWC 5/10/68), that Mrs. Frances Angello, plaintiff, is granted an extension of 30 days in which to answer or object to the interrogs etc., Ent. 5/13/68. issg notices.	
6/14/68	Flg. answers to the intervenor's interrogs. by the plaintiff.	1
6/14/68	Flg. answers to the intervenor's request for admissions by the plaintiff.	1
7/15/68	Flg. interrogs propounded to the intervenor by the plaintiff.	1
8/1/68	Flg. Motion by the U. S. of A., and ORDER(H.W.C. 8/2/68), that mover is allowed 30 days to and including 8/25/68, in which to answer etc., Ent. 8/8/68. issgnotices.	1
8/22/68	Flg. answers by the U. S. of A. to interrogs.	1
9/6/68	Flg. motion by USA for summary judgment; Notice of hearing on 10/16/68. Statement of Facts and Memo annexed.	
10/14/68	Flg. motion by Pltf. and ORDER that the trial of the motion for summary judgment be continued from 10/16/68 to 11/27/68. Ent. 10/15/68. Issg. notice.	
11/5/68	Flg. cross-motion by Pltf. for summary judgment; Notice of hearing on 11/27/68. Memo in support.	
11/27/68	Hearing and SUBMISSION on motion of USA for summary judgment.	2
3/28/69	ORDERED that the motion of intervenor, for summay judgment allowing it to foreclose the tax lien upon the fund of $1,913.88, is GRANTED, etc., That the Cross-motion of Plaintiff, for summary judgment is DENIED. (HWC) ent. 4/11/69. issg notices.	
6/2/69	Flg Notice of Appeal by the Plaintiff.	2
6/2/69	Flg Mtn and Order granting supersedeas, etc., (HWC 6/9/69) ent. 6/10/69. notices.	2
6/10/69	Flg Supersedeas bond in the sum of $250.00.	2
6/5/69	Flg Opinion by the Court.	

OVERSIZE PAGE – SEE NEXT FRAME
FOR REMAINDER OF PAGE

	lting the sum of $1,913.88 into the Registry of Court, etc. Ent. 5/6/68. issg notices. Statement of facts and memo annexed. CLOSED CASE	1
	MULTIPLE PARTY DISMISSAL	
5/10/68	Flg. Motion and ORDER(HWC 5/10/68), that Mrs. Frances Angello, plaintiff, is granted an extension of 30 days in which to answer or object to the interrogs etc., Ent. 5/13/68. issg notices.	1
6/14/68	Flg. answers to the intervenor's interrogs. by the plaintiff.	1
6/14/68	Flg. answers to the intervenor's request for admissions by the plaintiff.	1
7/15/68	Flg. interrogs propounded to the intervenor by the plaintiff.	1
8/1/68	Flg. Motion by the U. S. of A., and ORDER(H.W.C. 8/2/68), that mover is allowed 30 days to and including 8/25/68, in which to answer etc., Ent. 8/8/68. issgnotices.	1
8/22/68	Flg. answers by the U. S. of A. to interrogs.	1
9/6/68	Flg. motion by USA for summary judgment; Notice of hearing on 10/16/68. Statement of Facts and Memo annexed.	1
10/14/68	Flg. motion by Pltf. and ORDER that the trial of the motion for summary judgment be continued from 10/16/68 to 11/27/68. Ent. 10/15/68. Issg. notice.	1
11/5/68	Flg. cross-motion by Pltf. for summary judgment; Notice of hearing on 11/27/68. Memo in support.	1
11/27/68	Hearing and SUBMISSION on motion of USA for summary judgment.	2
3/28/69	ORDERED that the motion of intervenor, for summay judgment allowing it to foreclose the tax lien upon the fund of $1,913.88, is GRANTED, etc., That the Cross-motion of Plaintiff, for summary judgment is DENIED. (HWC) ent. 4/11/69. issg notices.	2
6/2/69	Flg Notice of Appeal by the Plaintiff.	2
6/2/69	flg Mtn and Order granting supersedeas, etc., (HWC 6/9/69) ent. 6/10/69. notices.	2
6/10/69	flg Supersedeas bond in the sum of $250.00.	2
6/5/69	flg Opoinion by the Court, Findings of Fact and Conclusions of Law And ORDERED granti the mtn of Intervenor, U. S. of A., for summary judgment etc., and denyin the mtnt of the pltff. (HWC 6/5/69) ent: 6/30/68. issg notices.	2

Over

SHEET No. (2)
C. A. 66-834

D. C. 110A Rev. Civil Docket Continuation

Angello etc vs. Metropolitan Life et al

SHEET No.
C.A. 66

DATE	PROCEEDINGS	Date Judge
6/27/69	flg JUDGMENT in favor of defendants, Metropolitan Life Ins., Co., and the U. S. of A, and against plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, dismissging her suit with costs. That there be fudgment in favor of Intervenor, U. S. of A., allowing it to foreclose the tax lien upon the fund of $1,913.88, now on deposit in the Registry of the Court. (ADOB HWC 6/27/69) ent. 6/30/69. issg notices.	
	JUN 1969 J. S. 6. CLOSED CASE	
7/8/69	flg Notice of Appeal by the Plaintiff.	

CLERK'S OFFICE:
A TRUE COPY

[illegible]

98

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Docket No. 28,154

[Caption Omitted]

RELEVANT DOCKET ENTRIES

Date	Filings & Proceedings
1969	
July 18	Docket Cause, Etc.
	* * * *
August 26	Original Brief on Behalf of Plaintiff-Appellant, Mrs. Frances Angello, Widow of Jack Sparacio (M).
	* * * *
September 26	Brief for the Appellee (Intervenor-Appellee-U.S.A.) (P).
	* * * *
December 5	Assigned for January 15, 1970 at New Orleans.
1970	
January 15	Entg. Argument & Submission Before Hons. Ainsworth, Dyer & Simpson, CJs.
June 22	Reversed "Per Dyer, C.J." Judge Simpson Dissenting
July 6	Ext. to 7/31/70—Petition for Rehearing. (Also Filed In No. 28163)
August 3	Flg. Letter of Appellee confirming that no petition for rehearing will be filed.
August 3	Flg. Motion of Appellee for Stay of Mandate. Granted to 9/20/70—REW, 8/11
September 22	Letter to S.C. Extending the time for filing Certiorari to 10/5/70.
October 9	Flg. Notice (PC) of filing petition for certiorari.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Civil Action No. 66-884
Section A

(Filed: Dec. 29, 1966)

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO

versus

METROPOLITAN LIFE INSURANCE COMPANY, and
UNITED STATES OF AMERICA

PETITION FOR REMOVAL FROM STATE COURT

The petition of the United States of America, through Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, with respect represents that:

1. This removal is based on Section 1441 of Title 28, United States Code. The United States District Court has original jurisdiction of this matter under Section 1346(e) of Title 28, United States Code as amended by Section 202(a), Federal Tax Lien Act of 1966.

2. The original action entitled, "Mrs. Frances Angello, widow of Jack Sparacio v. Metropolitan Life Insurance Company, Et Al.," No. 456-923 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana, is a suit against the United States of America, wherein the plaintiff seeks to recover the proceeds of her deceased husband's insurance policy No. 620965303E1 issued by the Metropolitan Life Insurance Company, who has refused payment because your petitioner, acting through the District Director of Internal Revenue Service, served upon the Metropolitan Life Insurance Company a Notice of Tax Lien.

3. There exists the issue as to whether the United States of America or the plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, has the right to collect the proceeds of policy No. 620965303E1.

4. This case is removable under Section 1446(b) of Title 28, United States Code.

5. That under Section 1446(d) of Title 28, United States Code, no bond is required of the United States of America.

6. A copy of plaintiff's original petition served upon the United States of America, via mail, on November 30, 1966, being the only pleading served upon the United States of America, is attached hereto and filed herewith.

WHEREFORE, petitioner prays that this action be removed from the Civil District Court for the Parish of Orleans, State of Louisiana, to the United States District Court for the Eastern District of Louisiana, New Orleans Division.

LOUIS C. LACOUR
United States Attorney

By /s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States
Attorney
418 Royal Street, Room 407
New Orleans, Louisiana 70130
Telephone: 527-2491

CIVIL DISTRICT COURT
IN AND FOR PARISH OF ORLEANS
STATE OF LOUISIANA
DIVISION OF LOUISIANA

No.
Docket No.

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO

vs.

METROPOLITAN LIFE INSURANCE COMPANY, ET AL

Filed: ....., 1966

.....
Deputy Clerk

TO THE HONORABLE, THE JUDGES OF THE CIVIL DISTRICT COURT IN AND FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA:

The petition of Mrs. Frances Angello, widow of Jack Sparacio, a person of the full age of majority and a resident of the Parish of Orleans, State of Louisiana, with respect represents:

I.

That your petitioner is the beneficiary under Policy No. 620 965 303 E1 issued by Metropolitan Life Insurance Company, a foreign insurance company authorized to do and doing business in the State of Louisiana on the life of Jack Sparacio, who died on March 11, 1966.

II.

Following the death of Jack Sparacio, petitioner's husband, your petitioner, who is the named beneficiary on said policy of life insurance, completed all the necessary forms and filed same with defendant, Metropolitan Life Insurance Company, in order to collect the proceeds due her under the policy.

III.

On April 13, 1966, defendant, Metropolitan Life Insurance Company acknowledged to petitioner that the amount of NINETEEN HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS was payable to petitioner, that all of the requirements had been met by petitioner in order to collect the proceeds due her under the policy, but that a notice of lien and notice of levy had been served on Metropolitan Life Insurance Company by the Internal Revenue Service of the U. S. Government and for this reason, defendant, Metropolitan Life Insurance Company has refused to pay to petitioner the amount due her under the policy.

IV.

That no tax is due the U. S. Government by your petitioner; any lien filed by the U. S. Government would be for taxes due by Jack Sparacio and not due by your petitioner; accordingly, the United States is not entitled to a lien or levy on the proceeds due petitioner under this policy. That the United States should be made a party defendant to these proceedings so that your petitioner can secure from this Court judgment ordering Metropolitan Life Insurance Company to pay over to petitioner the proceeds due her under the policy notwithstanding the notice of lien and notice of levy filed and served against defendant, Metropolitan Life Insurance Company by the defendant, United States through the Internal Revenue Service.

WHEREFORE, petitioner prays that the defendants, Metropolitan Life Insurance Company and United States Internal Revenue Service be duly cited to appear and answer this petition, that they be served with copies of same, and after all legal delays and due proceedings had, there be judgment herein in favor of petitioner, Mrs. Frances Angello, widow of Jack Sparacio, and against defendants, Metropolitan Life Insurance Company and United States Internal Revenue Service ordering Metropolitan Life Insurance Company to pay over to your

petitioner, Mrs. Frances Angello, widow of Jack Sparacio, the entire proceeds due her under Policy No. 620 965 303 E1 on the life of Jack Sparacio, deceased.

And for all general and equitable relief.

REUTER, REUTER & SCHOTT
Attorneys for
Mrs. Frances Angello,
widow of Jack Sparacio
1607 National Bank of
Commerce Bldg.
New Orleans, Louisiana 70112

By: /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney

VERIFICATION

Ernest N. Morial, being duly sworn, did depose and say that he is an Assistant United States Attorney; that he prepared and read the above and foregoing Petition for Removal and that the allegations contained therein are true and correct to the best of his knowledge, information and belief.

/s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States
Attorney

Sworn to and subscribed this
28th of December, 1966.
/s/ Gene S. Palmisano
Notary Public

---oOo---

MOTION TO INTERVENE

[Number and Title Omitted]

[Filed: May 8, 1967]

The United States of America moves for leave to intervene herein in order to assert the claim set forth in the complaint, of which a copy is hereto attached, on the ground that the United States of America has a tax lien against such property and rights to property subject to this action as provided for in Federal Rules of Civil Procedure Rule 24(a)(2).

LOUIS C. LACOUR
United States Attorney

By /s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States Attorney
500 St. Louis Street (527-2921)
New Orleans, Louisiana 70130

---oOo---

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Civil Action No. 66-884
Section A

[Filed: May 8, 1967]

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO, PLAINTIFF

v.

METROPOLITAN LIFE INSURANCE COMPANY, DEFENDANT

v.

UNITED STATES OF AMERICA, INTERVENOR

PETITION IN INTERVENTION

The Court's permission having been obtained, the United States of America, intervenor herein, by its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, complains and alleges:

I

The United States of America intervenes herein to enforce its tax liens against such property and rights to property subject to this action.

II

Intervention by the United States of America is commenced under the authorization of the Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States pursuant to Section 7401 of the Internal Revenue Code of 1954.

III

On February 19, 1965, a delegate of the Secretary of the Treasury made assessments against the plaintiff-tax-

payer, Frances Sparacio (now, Frances Angello), for her federal income tax liabilities for the years 1959, 1960 and 1961 in amounts totaling $12,239.27.

IV

Notice of the foregoing assessments and demand for payment was made in accordance with law upon Frances Sparacio (now Frances Angello) on February 19, 1965.

V

A "Notice of Federal Tax Lien" (Treasury Department Form 668) reflecting the foregoing liabilities was filed in accordance with law with the Recorder of Mortgages, Parish of Orleans, New Orleans, Louisiana, on April 13, 1965.

VI

The taxpayer-plaintiff, Frances A. Sparacio (now Frances Angello) has refused and neglected to pay all of the foregoing liabilities so that after certain administrative adjustments, she is presently indebted to the United States for income tax liabilities for the years 1959, 1960 and 1961 in the total amount of $3,211.06, plus interest thereon as provided by law.

VII

On May 14, 1965, a delegate of the Secretary of the Treasury caused to be served on the Louisiana Tax Clerk a Notice of Levy (Treasury Department Form 668-A), which had the effect of notifying the Metropolitan Life Insurance Company of the income tax liabilities of the plaintiff-taxpayer.

WHEREFORE, the United States of America prays:

1. That this Court adjudicate the respective rights of all parties heretofore with respect to the property which is the subject of this action.

2. That this Court determine that the plaintiff-taxpayer is indebted to the United States of America in the amounts of $3,211.06, plus interest thereon as provided by law.

3. That this Court order, adjudge and decree that the indebtedness of the plaintiff-taxpayer is secured by federal tax liens in favor of the United States and that such liens attach to her rights in the subject property.

4. That the federal tax liens here above set forth be foreclosed upon the proceeds of the insurance policy which is the subject of this action.

5. That the Court render such other and further relief as is just and proper in the premises.

LOUIS C. LACOUR
United States Attorney

By /s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States Attorney

---oOo---

MOTION TO DISMISS

[Number and Title Omitted]

[Filed: May 8, 1967]

The defendant, United States of America, by and through its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, respectfully moves this Court to dismiss this action on the ground that it: (1) seeks declaratory judgment with respect to federal taxes; and, (2) inferentially seeks to enjoin the collection of federal taxes, which causes are barred by statute.

LOUIS C. LACOUR
United States Attorney

By /s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States Attorney

---oOo---

AFFIDAVIT

[Number and Title Omitted]

STATE OF LOUISIANA
PARISH OF ORLEANS

Before me, the undersigned authority, personally came and appeared Ernest N. Morial, Assistant United States Attorney for the Eastern District of Louisiana, who, after being duly sworn, did depose and say:

That to the best of his knowledge, information, and belief, and his files so reflect, the plaintiff herein, Frances Angello, is indebted to the United States of America for unpaid income taxes in the amount of $3,211.06, plus interest and that the attached exhibits (Notice of Levy and Notice of Federal Tax Lien) show that these documents were executed with respect to the tax liabilities of Frances Sparacio (Now Angello).

/s/ Ernest N. Morial
ERNEST N. MORIAL
Assistant United States
Attorney

Sworn to and subscribed before
me this 8 day of May, 1967.

/s/ Harry F. Connick
Notary Public

Form 668
(REV. NOV. 1961)

U. S. TREASURY DEPARTMENT - INTERNAL REVE SERVICE

NOTICE OF FEDERAL TAX LIEN UNDER INTERNAL REVENUE LAWS

DISTRICT
New Orleans

SERIAL NUMBER
NO 14856

Pursuant to the provisions of Sections 6321, 6322, and 6323 of the Internal Revenue Code of 1954, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

NAME OF TAXPAYER
Jack Sparacio & Frances A. Sparacio

RESIDENCE OR PLACE OF BUSINESS
6240 Pasteur Blvd, New Orleans, Louisiana

TYPE OF TAX AND PERIOD (a)	ASSESSMENT DATE (b)	REFERENCE NO. (c)	AMOUNT OF ASSESSMENT (d)
Income 1040 1958	Feb 19, 1965	Feb 19-D-6201-65 N	846.42
Income 1040 1959	Feb 19, 1965	Feb 19-D-6202-65 N	3658.56
Income 1040 1960	Feb 19, 1965	Feb-19-D-6203-65 N	2717.50
Income 1040 1961	Feb 19, 1965	Feb-19-D-6204-65 N	5863.21
PLACE OF FILING: Recorder of Mortgages, Parish of Orleans, New Orleans, Louisiana		TOTAL	$ 13,085.69

WITNESS my hand at New Orleans, Louisiana, on this,

the 12th day of April, 1965

DISTRICT DIRECTOR OF INTERNAL REVENUE	BY (Signature)	TITLE
Chester A. Usry	Jack H. Terry Jack H. Terry	Revenue Officer

(NOTE: Certificate of officer authorized by law to take acknowledgments is not essential to the validity of Notice of Federal Tax Lien G.C.M. 26419, C.B. 1950-51, 125.)

PART 2 - To be receipted and returned to the Internal Revenue Service

No._____

UNITED STATES

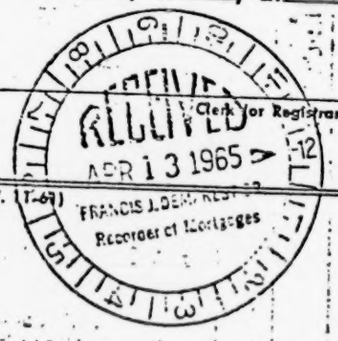
vs.

NOTICE OF TAX LIEN

Filed this _____ day of

_____, 19____, at ____ m.

_____
(Clerk or Registrar).



FORM 668 (REV. 7-63)

INTERNAL REVENUE CODE OF 1954

SEC. 6321. LIEN FOR TAXES

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

SEC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

SEC. 6323. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) INVALIDITY OF LIEN WITHOUT NOTICE.--Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) Under State or Territorial Laws.--In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) With Clerk of District Court.--In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) With Clerk of District Court for District of Columbia.--In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) FORM OF NOTICE.--If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) EXCEPTION IN CASE OF SECURITIES.--

(1) Exception.--Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) Definition of Security.--As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.--If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

SEC. 6325. RELEASE OF LIEN OR PARTIAL DISCHARGE OF PROPERTY.

(a) RELEASE OF LIEN.--Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if--

(1) Liability Satisfied or Unenforceable.--The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied, has become legally unenforceable, or, in the case of the estate tax imposed by chapter 11 or the gift tax imposed by chapter 12, has been fully satisfied or provided for or

(2) Bond Accepted.--There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such rules or regulations.

FORM 668-A
(REV. DEC. 1962)

U. S. TREASURY DEPARTMENT — INTERNAL REVENUE SERVICE

NOTICE OF LEVY

TO

Metropolitan Life Insurance Company
1 Madison Ave.
New York, New York

Policy Number: 620 965 303

DATE
April 30, 1965

You are hereby notified that there is now due, owing and unpaid to the United States of America from the taxpayer whose name appears below the sum of → $ 13,219.00

CLASS OF TAX AND PERIOD	DATE OF ASSESSMENT	REFERENCE NO.	UNPAID BALANCE	STATUTORY ADDITIONS	TOTAL
Income 1040 1958	2/19/65	Feb 19-D-6201-65	$ 846.42	$ 8.58	$ 855.00
Income 1040 1959	2/19/65	Feb 19-D-6202-65	3658.56	36.44	3695.00
Income 1040 1960	2/19/65	Feb 19-D-6203-65	2717.50	27.50	2745.00
Income 1040 1961	2/19/65	Feb 19-D-6204-65	5863.21	60.79	5924.00
Notice of Federal Tax Lien Filed, April 13, 1965, Parish of Orleans, State of Louisiana			TOTAL AMOUNT DUE		$ 13,219.00

You are further notified that demand has been made upon the taxpayer for the amount set forth herein, and that such amount is still due, owing, and unpaid from this taxpayer, and that the lien provided for by Section 6321, Internal Revenue Code of 1954, now exists upon all property or rights to property belonging to the aforesaid taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his tax liability. Checks or money orders should be made payable to "Internal Revenue Service".

DISTRICT DIRECTOR OF INTERNAL REVENUE	BY (Signature)	TITLE
Chester A. Usry	Jack H. Terry	Revenue Officer

600 South Street, New Orleans

(Name and Address of Taxpayer)

Jack Sparacio and Frances Angello Sparacio
6240 Pasteur Blvd.
New Orleans, La.

CERTIFICATE OF SERVICE

I hereby certify that this levy was served by delivering a copy of this notice of levy to the person named below.

NAME: Alvin M. Moore
TITLE: Ast. Tax Clerk
DATE AND TIME: 5/14/65 4:30 PM
SIGNATURE OF REVENUE OFFICER: [signature]

PART 1 — TO BE RETURNED TO INTERNAL REVENUE SERVICE

FORM 668-A (REV. 12-62)

001

HEARING ON MOTION OF UNITED STATES TO INTERVENE AND MOTION OF UNITED STATES TO DISMISS AND ORDER GRANTING BOTH MOTIONS

MINUTE ENTRY: CHRISTENBERRY, J. June 7, 1967

[Number and Title Omitted]

This cause came on this day for hearing on motion of United States to intervene and motion of United States to dismiss.

PRESENT:

Patrick M. Schott, Esq.
Attorney for Plaintiff

Ernest N. Morial, Esq.
Assistant U. S. Attorney

IT IS ORDERED that the motion of United States to intervene be, and it is hereby, GRANTED.

IT IS FURTHER ORDERED that motion of United States to dismiss be, and it is hereby, GRANTED.

---oOo---

ANSWER TO PETITION IN INTERVENTION

[Number and Title Omitted]

[Filed: Jan. 2, 1968]

Now into Court comes defendant in intervention, Mrs. Frances Angello, widow of Jack Sparacio, hereinafter referred to as "Mrs. Sparacio" to make the following defenses to the petition in intervention filed by the United States of America herein.

FIRST DEFENSE

The property on which the United States is seeking to enforce a lien consists of a sum of money owed by Metropolitan Life Insurance Company on an insurance policy on the life of Mrs. Sparacio's husband and in which Mrs. Sparacio was the beneficiary. These funds are therefore the property of Mrs. Sparacio and no one else's.

SECOND DEFENSE

The assessment made against Mrs. Sparacio as set out in paragraph III of the petition in intervention were made wrongfully, erroneously and illegally against Mrs. Sparacio for the following reasons:

1. The tax liabilities were Mrs. Sparacio's husband's and not hers and should have been based upon separate tax returns signed and filed by him alone.
2. The Internal Revenue Service secured Mrs. Sparacio's signature on joint returns by means of such representations and under such circumstances that she was misled, made the victim of her own ignorance of the law and prevented from having competent legal advice as warranted by the facts and circumstances of the case.
3. The tax liabilities could not have been assessed against Mrs. Sparacio without the aforesaid wrongful procurement of her signature on joint returns for the years set out in paragraph III of the petition.

THIRD DEFENSE

Mrs. Sparacio is justified under the facts and law applicable thereto in her refusal to pay these tax liabilities which are her husband's and not hers.

WHEREFORE, Mrs. Sparacio prays:

1. That the Court dismiss the claim of the United States as to the life insurance proceeds.
2. That the lien of the United States on the proceeds of the insurance policy be cancelled.

3. That the defendant in intervention be awarded all of said proceeds due by the Metropolitan Life Insurance Company under the said insurance policy.
4. For all general and equitable relief.

REUTER, REUTER & SCHOTT
Attorneys for defendant in intervention
1607 N.B.C. Building
New Orleans, La. 70112

By /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Atty.

---oOo---

INTERROGATORIES

[Number and Title Omitted]

[Filed: April 30, 1968]

In accordance with the provisions of Rule 33 of the Federal Rules of Civil Procedure, the United States of America, intervenor, by its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, requires the plaintiff, Mrs. Frances Angello, to answer the following interrogatories separately, fully, in writing, under oath, and signed within fifteen (15) days of service hereof:

1. If you do not admit each and every statement contained in the Request for Admissions, Nos. 1 through 12, inclusive, filed herein, explain and specify in detail in what respect any statement not admitted is believed to be untrue, and what you believe to be the correct facts in this regard.
2. If you do not admit each and every statement contained in the Request for Admissions, Nos. 1 through 12, inclusive, filed herein, list the documents or records

of any nature which support or tend to support your denial of any such statement. In answering this interrogatory, you are to include the names and addresses of the person or persons having possession, custody or control of such documents or records.

3. If you do not admit each and every statement contained in the Request for Admissions, Nos. 1 through 12, inclusive, filed herein, list the names and addresses of any person or persons who have knowledge of any fact or facts which support or tend to support your denial of any such statement.

4. State the amount and source of your income for the year 1959.

5. State the source and amount of your income for the year 1960.

6. State the source and amount of your income for the year 1961.

LOUIS C. LACOUR
United States Attorney

By /s/ James Carriere
Assistant United States
Attorney

---oOo---

REQUEST FOR ADMISSIONS

[Number and Title Omitted]

[Filed: April 30, 1968]

Pursuant to the provisions of Rule 36, Federal Rules of Civil Procedure, the United States of America, by its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, requests the plaintiff, Mrs. Frances Angello, within ten (10) days after service of this request, to make the following admissions for the purpose of this action only:

1. That during the years 1959, 1960 and 1961, you were married to Jack Sparacio.

2. That during the years 1959, 1960 and 1961, you resided in the State of Louisiana.

3. That you filed no income tax return for the year 1959.

4. That you filed no income tax return for the year 1960.

5. That you filed no income tax return for the year 1961.

6. That you have no books or records relating to the business operations and income of your deceased husband, Jack Sparacio, for the years 1959, 1960 and 1961.

7. That you have no personal knowledge of any facts relating to the business operations and income of your deceased husband, Jack Sparacio, for the years 1959, 1960 and 1961.

8. That on February 19, 1965, the District Director of Internal Revenue made assessments against you for your federal income tax liabilities for the years 1959, 1960 and 1961, in the total amount of $12,239.27.

9. That notice of the foregoing assessments and demand for payment were made upon you on February 19, 1965.

10. That a Notice of Federal Tax Lien (Treasury Department Form 668) reflecting the foregoing liabilities was filed with the Recorder of Mortgages, Parish of Orleans, New Orleans, Louisiana, on April 13, 1965.

11. That you have made no payments to the Internal Revenue with respect to the aforementioned liabilities.

12. That after certain administrative adjustments, you are currently indebted to the United States of America for federal income tax liabilities for the years 1959, 1960 and 1961 in amounts totaling $3,211.06, plus statutory interest.

LOUIS C. LACOUR
United States Attorney

By: /s/ James Carriere
Assistant United States
Attorney

---oOo---

Motion for Summary Judgment on Behalf of Defendant, Metropolitan Life Insurance Company

[Number and Title Omitted]

[Filed: May 2, 1969]

Defendant, Metropolitan Life Insurance Company, appearing herein through undersigned counsel, moves this Court for Summary Judgment in its favor and suggests to the Court that mover holds certain insurance proceeds in the sum of ONE THOUSAND NINE HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS as to which the other parties to these proceedings, Mrs. Frances Angello, widow of Jack Sparacio and United States of America, have each asserted a claim against mover and that mover holds such proceeds merely as a stakeholder having no interest in the said proceeds and that mover desires to deposit the said proceeds into the Registry of this Honorable Court in order that the other parties to these proceedings may assert their respective claims against the said proceeds; mover, therefore, asks that it be granted leave from this Honorable Court to deposit the sum of ONE THOUSAND NINE HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS into the Registry of this Court and that there be Summary Judgment entered in favor of mover, Metropolitan Life Insurance Company, dismissing all claims being asserted against mover upon mover's making the said deposit of ONE THOUSAND NINE HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS into the Registry of this Court and that, upon the making of the said deposit, mover be recognized as having discharged in full all of its obligations and duties under Policy No. 620-965-303 M1 issued by mover; mover further suggests to the Court that an analysis of the following documents, either attached to this Motion or already part of the record, will disclose that there is no genuine issue in respect to any material fact and that mover is entitled, as a matter of law, to all relief demanded:

1. The pleadings of all parties heretofore filed in this proceeding;
2. The statement of those facts not in issue required by Rule 4E of the Local Rules of the United States District Court for the Eastern District of Louisiana, New Orleans Division.

/s/ Phelps, Dunbar, Marks,
Claverie & Sims
PHELPS, DUNBAR, MARKS,
CLAVERIE & SIMS
Attorneys for Metropolitan
Life Insurance Company
1300 Hibernia Bank Building
New Orleans, Louisiana 70112
Telephone No. 529-1311

/s/ Richard C. Brown
RICHARD C. BROWN
Trial Attorney

ORDER

Considering that all counsel of record have approved and submitted without objection the above and foregoing Motion for Summary Judgment of defendant, Metropolitan Life Insurance Company;

Let the above and foregoing Motion for Summary Judgment of defendant, Metropolitan Life Insurance Company, be granted upon defendant, Metropolitan Life Insurance Company, depositing the sum of ONE THOUSAND NINE HUNDRED THIRTEEN AND 88/100 ($1,913.88) DOLLARS into the Registry of this Court, said sum to be held subject to the further orders of this Court.

New Orleans, Louisiana, this 6th day of May, 1968.

/s/ Herbert W. Christenberry
United States District Judge

---oOo---

ANSWERS TO INTERROGATORIES

[Number and Title Omitted]

[Filed: June 14, 1968]

1. The undersigned does not admit Request No. 12 and the explanation and detailed specification as to why can be found in her pleadings and in the affidavit which she has filed in this record in support of the memorandum in opposition to various motions filed by the United States earlier in the proceedings.

2. Same as No. 1 above.

3. The undersigned will use her own testimony to prove her contention that she does not owe the taxes along with the testimony of certain agents of the Internal Revenue Service, the exact identity and address of whom has not yet been determined by the undersigned.

4. None.

5. None.

6. None.

/s/ Mrs. Frances Angello Sparacio
MRS. FRANCES ANGELLO

Sworn to and subscribed before
me this 10 day of June, 1968

/s/ [Name Illegible]
Notary Public

---oOo---

ANSWER TO REQUEST FOR ADMISSIONS

[Number and Title Omitted]

[Filed: June 14, 1968]

NOW INTO COURT comes Mrs. Frances Angello and for answers to the request for admissions served on her says:

1. Yes.
2. Yes.
3. Yes.
4. Yes.
5. Yes.
6. Yes.
7. Yes.
8. Yes.
9. Yes.
10. Yes.
11. Yes.
12. No.

/s/ Mrs. Frances Angello Sparacio
MRS. FRANCES ANGELLO

Sworn to and subscribed before
me this 10 day of June, 1968.

/s/ [Name Illegible]
Notary Public

---oOo---

WRITTEN INTERROGATORIES

[Number and Title Omitted]

[Filed: July 15, 1968]

NOW INTO COURT comes Mrs. Frances Angello, plaintiff, in order to propound written interrogatories to United States of America, intervenor, in accordance with the Federal Rules of Civil Procedure:

1. On what date were the income tax returns signed by Mrs. Frances Angello Sparacio, which returns were made the basis for the assessment of taxes against her in these proceedings?

2. Give the address of that place where these returns were signed.

3. Give the name and full address of the agent of the Department of Revenue who physically presented these papers to Mrs. Frances Angello for her signature.

4. Give the full educational background of that agent.

5. How long has that agent been with the Internal Revenue Service?

6. Give the names and addresses of all of the agents of the Internal Revenue Service who witnessed the signature of Mrs. Frances Angello on the returns which form the basis for the assessment of the taxes in this case.

7. Give the name and address of that agent or those agents who had charge of the files and who gave instructions to the United States Attorney handling the case of the United States against Mrs. Angello's husband, Jake or (Jack) Sparacio, on October 7, 1964, and throughout the prosecution of the proceedings No. 29-667 in the United States District Court for the Eastern District of Louisiana.

8. Was there any basis for collection of these taxes from Mrs. Frances Angello before that date when her signature was obtained on the joint returns which form the basis for the assessment in this case?

9. Who prepared these joint returns which were signed by Mrs. Frances Angello? Give the name and address of that agent.

10. Give the full name and address of all internal revenue service personnel who supervised that agent identified above who physically presented the joint returns to Mrs. Angello for her signature.

11. Did the agent of the Internal Revenue Service who got Mrs. Angello's signature on the joint returns advise her of her right to have an attorney with whom she could consult concerning this matter?

12. Was there an attorney present at this meeting between Mrs. Angello and the agent of the Internal Revenue Service when she signed the joint return?

REUTER, REUTER & SCHOTT
1607 National Bank of
Commerce Bldg.
New Orleans, Louisiana 70112

By: /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney

---oOo---

ANSWERS TO INTERROGATORIES

[Number and Title Omitted]

[Filed: Aug. 22, 1968]

The United States of America, by and through the United States Attorney for the Eastern District of Louisiana, answers the Interrogatories served upon it as follows:

Interrogatories Numbered 1 through 6, inclusive and *8 through 12*, inclusive:

The files of the Internal Revenue Service indicate that no federal income tax returns were filed by Mrs. Frances Angello and Jack Sparacio for the years 1959, 1960 and 1961. In fact, plaintiff has

admitted in her Answers to Request for Admissions (Nos. 3, 4 and 5) on file herein, that she filed no income tax returns for these years.

The federal tax assessments against the plaintiff are not based upon tax returns, but rather upon the imputation to her of one-half of her husband's income during 1959, 1960 and 1961, pursuant to Louisiana law.

Interrogatory Number 7:

Revenue Agents Robert J. McCoy, Jr., and A. Martin Donovan, Jr.; Special Agent Charles H. Langhoff, Jr., all of whom are currently employed by the Internal Revenue Service, Federal Building, 600 South Street, New Orleans, Louisiana.

LOUIS C. LACOUR
United States Attorney

By: /s/ Kathleen Ruddell
Assistant United States Attorney

VERIFICATION

DISTRICT OF COLUMBIA)
) ss
CITY OF WASHINGTON)

AUGUSTUS A. SIMPSON, JR., being first duly sworn, deposes and says:

That he is a Trial Attorney in the Tax Division, Department of Justice, to whom this case has been assigned and that the foregoing Answers to Plaintiff's Interrogatories are based upon information contained in the files of the Internal Revenue Service and of the Department

of Justice and that said answers are true and correct to the best of his knowledge.

/s/ Augustus A. Simpson, Jr.
AUGUSTUS A. SIMPSON, JR.

Subscribed and sworn to before me
this 14th day of August, 1968.

/s/ Barbara R. F. Szyola
Notary Public

My Commission expires March 14, 1970.

---oOo---

MOTION FOR SUMMARY JUDGMENT

[Number and Title Omitted]

[Filed: Sept. 6, 1968]

The United States of America, by and through its attorney, Louis C. LaCour, United States Attorney for the Eastern District of Louisiana, respectfully moves this Court for the entry of an order that the tax liens of the United States be foreclosed upon the fund in the amount of $1,913.88, which has been interpleaded herein, on the ground that the pleadings, the affidavit attached hereto, and the answers to interrogatories and requests for admissions establish that there is no genuine issue of any material fact, and the intervenor, the United States of America, is entitled to judgment as a matter of law.

LOUIS C. LACOUR
United States Attorney

By: /s/ Kathleen Ruddell
Assistant United States
Attorney

STATE OF LOUISIANA)
PARISH OF ORLEANS)

AFFIDAVIT

Before me, the undersigned authority, personally came and appeared,

Chester A. Usry

who, after being by me first duly sworn, did depose and say:

1. That, I am Chester A. Usry, District Director of Internal Revenue Service, New Orleans District, and as such I have the jurisdiction for collection of these accounts.

2. I certify that an assessment was made against Jack and Frances Sparacio, 6240 Pasteur Boulevard, New Orleans, Louisiana, for income tax and interest on the dates, for the taxable periods, and in the amounts, as set forth herein below:

Period	Type of Tax	Tax Assessed	Penalty Assessed	Interest Assessed	Total Assessed	Date Assessed
1959	Income	$2,016.72	$1,059.79	$ 582.05	$ 3,658.56	2-19-65
1960	Income	$1,550.46	$ 812.59	$ 354.45	$ 2,717.50	2-19-65
1961	Income	$3,459.41	$1,820.51	$ 583.29	$ 5,863.21	2-19-65
Totals		$7,026.59	$3,692.89	$1,519.79	$12,239.27	

The above joint assessments were based upon income attributable to Jack Sparacio.

3. I certify that the amounts now due and owing from Frances Angello for individual income tax and interest, for the taxable period 1959, 1960 and 1961, are in the amounts set forth below:

Period	Tax	Assessed Interest	Totals
1959	$ 918.36	$265.05	$1,183.41
1960	$ 671.00	$153.40	$ 824.40
1961	$1,621.70	$273.43	$1,895.13
Totals	$3,211.06	$691.88	$3,902.94

The amounts shown above result from the imputation to Frances Angello of one-half of the deceased husband's business income for these said years, as computed on a separate-return basis.

4. I certify that statutory notices of and demands for payments of the aforementioned liabilities were made on the dates more fully set out as follows:

Taxable Period	Date First Notice and Demand Issued
1959—Income	February 19, 1965
1960—Income	February 19, 1965
1961—Income	February 19, 1965

5. I certify that there now remains outstanding on the said assessments now due and owing from Frances Angello, the following amounts, together with interest and costs thereon, all as is more fully set out as follows:

Taxable Period	Outstanding Assessments	Rate Per Diem	Interest Computed to August 5, 1968	Balance Due as of August 5, 1968
1959	$1,183.41	.000164*	$190.83	$1,374.24
1960	$ 824.40	.000164	$139.43	$ 963.83
1961	$1,895.13	.000164	$336.98	$2,232.11
	$3,902.94		$667.24	$4,570.18

* Interest is not computed on assessed interest.

Interest will accrue on these accounts at .53¢ per day after August 5, 1968.

6. I certify that on April 13, 1965, April 19, 1965 and July 28, 1965, Notices of Federal Tax Liens were filed with the Recorder of Mortgages, Parish of Orleans, and the Clerk of Court, Tangipahoa Parish, State of Louisiana.

/s/ Chester A. Usry
CHESTER A. USRY
District Director

Subscribed and sworn before me this 5th day of August, 1968.

/s/ William M. Lucas, Jr.
Notary Public

[SEAL]

My commission expires at death

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CROSS-MOTION FOR SUMMARY JUDGMENT

[Number and Title Omitted]

[Filed: Nov. 5, 1968]

Mrs. Frances Angello Sparacio, through her attorney, Patrick M. Schott, moves the Court for summary judgment in her favor dismissing the claim of the United States as to the fund on deposit in the amount of One Thousand Nine Hundred Thirteen and 88/100 ($1,913.88) Dollars, cancelling the lien of the United States on said fund and awarding it to her on the ground that the pleadings and affidavits on file herein show that there is no genuine issue of any material fact, and Mrs.

Frances Angello Sparacio is entitled to judgment as a matter of law.

REUTER, REUTER & SCHOTT
Attorneys for Mrs. Frances
Angello Sparacio
1607 National Bank of
Commerce Bldg.
New Orleans, Louisiana 70112

By: /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney

---oOo---

HEARING AND SUBMISSION ON MOTION OF U. S. OF AMERICA FOR SUMMARY JUDGMENT AND CROSS-MOTION BY PLAINTIFF FOR SUMMARY JUDGMENT

MINUTE ENTRY: CHRISTENBERRY, J. November 27, 1968

[Number and Title Omitted]

This cause came on this day for hearing on motion of the U. S. of America, intervenor, for summary judgment, and cross-motion by plaintiff for summary judgment as to claim of the United States re funds on deposit.

PRESENT:

Patrick M. Schott, Esq.
Attorney for Plaintiff

Charles H. White, Esq.
Attorney for defendant, U.S.A.

Argument:

SUBMITTED.

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ORDER GRANTING MOTION OF INTERVENOR FOR SUMMARY JUDGMENT AND ORDER DENYING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

MINUTE ENTRY CHRISTENBERRY, J. March 28, 1969

[Number and Title Omitted]

This cause came on on a former day on motion of intervenor, United States of America, for summary judgment in its favor allowing it to foreclose the tax lien upon the fund of $1913.88, now on deposit in the registry of the court; and on cross motion of plaintiff, Mrs. Frances Angello Sparacio, for summary judgment in her favor dismissing the claim of the United States of America to the said fund on deposit.

Now, after considering the pleadings, the memoranda and arguments of counsel, the court finds that there are no genuine issues of material fact and that the intervenor, United States of America is entitled to judgment as a matter of law, and accordingly,

IT IS ORDERED that the motion of intervenor, United States of America, for summary judgment allowing it to foreclose the tax lien upon the fund of $1913.88, now on deposit in the registry of the court be and the same is hereby GRANTED, and a judgment will be entered accordingly.

IT IS FURTHER ORDERED that the cross motion of plaintiff, Mrs. Frances Angello, for summary judgment dismissing the claim of the United States of America be and the same is DENIED. Intervenor, United States of America, will file Findings of Fact and Conclusions of Law in accordance with the judgment.

/s/ H.W.C.

AUTHORITY

Bender v. Pfaff, 282 U.S. 127 (1930)
Commissioner of Internal Revenue v. Hyman, 135 F.2d 49 (5th CCA 1943)
Saenger v. Commissioner, 69 F.2d 633 (5th CCA 1934)
Smith v. Donnelly, 67 F.Supp. 415 (E.D.La. 1946)

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NOTICE OF APPEAL

[Number and Title Omitted]

[Filed: June 2, 1969]

Notice is hereby given that Mrs. Frances Angello Sparacio, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Order granting a summary judgment in favor of the United States of America and denying the cross-motion for summary judgment filed by Mrs. Frances Angello Sparacio, entered in this action on the 11th day of April, 1969.

REUTER, REUTER & SCHOTT

By /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney
Attorneys for Mrs. Frances Angello Sparacio
1607 National Bank of Commerce Bldg.
New Orleans, Louisiana 70112

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Findings of Fact and Conclusions of Law

[Number and Title Omitted]

[Filed: June 5, 1969]

Patrick M. Schott, Esq.
Attorney for Plaintiff

Phelps, Dunbar, Marks, Claverie & Sims
Attorneys for Defendant

Charles H. White, Esq.
Assistant United States Attorney
Attorney for Intervenor

Christenberry, District Judge:

This suit was instituted by Mrs. Frances Angello, widow of Jack Sparacio, as beneficiary of Insurance Policy No. 620 965 303 E1 issued by the defendant, Metropolitan Life Insurance Company, on the life of her husband. The United States of America intervened in this suit to collect income taxes allegedly owed by the plaintiff. The defendant deposited the proceeds of the insurance policy ($1,913.88) in the registry of the Court, and by agreement of the parties a motion for summary judgment was granted as to the Metropolitan Insurance Company only.

On a former day this cause came on for hearing on motion of the intervenor, United States of America, for summary judgment in its favor allowing it to foreclose the tax lien upon the fund of $1,913.88, now on deposit in the registry of the Court; and on cross motion of plaintiff, Mrs. Frances Angello Sparacio, for summary judgment in her favor dismissing the claim of the intervenor to the fund on deposit.

Now, after considering the pleadings, the memoranda and arguments of counsel, the Court makes the following:

FINDINGS OF FACT

1.

On February 19, 1965, the District Director of Internal Revenue made assessments against Mr. Jack Sparacio and Mrs. Frances Angello Sparacio for federal income tax liabilities for the years 1959, 1960 and 1961 in amounts totaling $12,239.27. Notice of the assessments and demand for payment were made upon Mr. and Mrs. Sparacio on the same day.

2.

At all times relevant, the plaintiff, Mrs. Frances Angello Sparacio, was the wife of Jack Sparacio.

3.

Jack Sparacio died on March 11, 1966, and the District Director of Internal Revenue imputed to Mrs. Sparacio one-half of her husband's income for the subject years, and computed her tax liability to be $4,570.18, including interest accrued through August 5, 1968.

4.

The sum of $1,913.88, proceeds from Policy No. 620 965 303 E1, was deposited in the registry of the Court by the Metropolitian Life Insurance Company.

5.

The plaintiff claims the proceeds now in the registry of the Court as the beneficiary of the insurance policy.

6.

The plaintiff denies the tax liability and has made no payment on the alleged indebtedness.

CONCLUSIONS OF LAW

1.

The Court has jurisdiction of the parties and of the subject matter of this cause and venue is properly laid in the Eastern District of Louisiana. The cause falls within the original jurisdiction of this Court as provided in Title 28, United States Code, Section 1346(e).

2.

In Louisiana, each spouse is liable for one-half of the federal income taxes related to community income. Bender v. Pfaff, 282 U.S. 127 (1930); *Commissioner of Internal Revenue* v. *Hyman*, 135 F.2d 49 (5 CCA 1943); *Smith* v. *Donnelly*, 65 F. Supp. 415 (E.D.La. 1946); *Saenger* v. *Commissioner*, 69 F.2d 633 (5 CCA 1934).

3.

The plaintiff is indebted to the United States of America in the amount of $4,570.18, which represents one-half of the income taxes due on her share of the community income for the taxable periods 1959, 1960 and 1961, including interest accrued through August 5, 1968.

4.

ACCORDINGLY, IT IS ORDERED that the motion of intervenor, United States of America, for summary judgment allowing it to foreclose the tax liens upon the fund of $1,913.88, now on deposit in the registry of the court be and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the cross motion of plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, for summary judgment dismissing the claim of the United States of America be and the same is hereby DENIED.

Judgment will be entered accordingly.

New Orleans, Louisiana, this 5th day of June, 1969.

/s/ Herbert W. Christenberry
United States District Judge

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JUDGMENT

[Number and Title Omitted]

The Court having, on June 7, 1969, granted the motion of defendant, United States of America, to dismiss and having, on May 6, 1968, granted the motion of defendant, Metropolitan Life Insurance Company, for summary judgment and having, on March 28, 1969, granted the motion of intervenor, United States of America, for summary judgment and having denied plaintiff's cross motion for summary judgment and considering the written reasons of the Court on file herein, and considering the direction of the Court as to entry of judgment;

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Metropolitan Life Insurance Company and the United States of America, and against plaintiff, Mrs. Frances Angello, widow of Jack Sparacio, dismissing her suit with costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of intervenor, United States of America, allowing it to foreclose the tax lien upon the fund of $1,913.88, now on deposit in the registry of the Court.

New Orleans, Louisiana, this 27 day of June, 1969.

/s/ A. Dallam O'Brien, Jr.
A. DALLAM O'BRIEN, JR.
Clerk

APPROVED AS TO FORM:

/s/ Herbert W. Christenberry
United States District Judge

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NOTICE OF APPEAL

[Number and Title Omitted]

[Filed: July 8, 1969]

Notice is hereby given that Mrs. Frances Angello Sparacio, plaintiff above named, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the Judgment in favor of defendants, Metropolitan Life Insurance Co., and the United States of America against plaintiff, Mrs. Frances Angello widow of Jack Sparacio, dismissing her suit with costs and in favor of intervenor, United States of America, allowing it to foreclose its tax lien upon the fund of $1,913.88 now on deposit in the registry of the Court, entered in this action on the 30th day of June, 1969.

REUTER, REUTER & SCHOTT

By /s/ Patrick M. Schott
PATRICK M. SCHOTT
Trial Attorney
Attorneys for Mrs. Frances Angello Sparacio
1607 National Bank of Commerce Bldg.
New Orleans, Louisiana 70112

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28154

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO,
PLAINTIFF-APPELLANT

v.

METROPOLITAN LIFE INSURANCE COMPANY,
DEFENDANT-APPELLEE

and

UNITED STATES OF AMERICA, INTERVENOR-APPELLEE

Appeal From the United States District Court
for the Eastern District of Louisiana

(June 22, 1970)

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

DYER, *Circuit Judge:* This is a companion case to *Anne Mitchell* v. *Commissioner*, 5 Cir. 1970, —— F. 2d ——, No. 28,163, decided this day. Essentially the same question is posed in both cases, *i.e.*, under Louisiana community property law is the wife's interest in the community of such a character that her separate property is liable for one-half of the income taxes due on the community income. The District Court found that "each spouse is liable for one-half of the federal income taxes related to Community income," and entered judgment for the Government. We reverse.

Appellant, Mrs. Frances Sparacio Angello, was the wife of Jack Sparacio from 1959 through 1961 and resided in Louisiana under the community of acquets and gains. No income tax returns were filed for those years. On February 19, 1965, the District Director of Internal

Revenue made an assessment against Mrs. Angello and her husband for federal income tax liabilities for those years in the amount of $12,239.27. Based upon these assessments the United States, on April 13, 1965, filed a Notice of Federal Tax Lien with the Recorder of Mortgages, Parish of New Orleans. On April 30, 1965, a notice of levy demanding all property in its possession belonging to the Sparacios was addressed to the Metropolitan Life Insurance Company, which had issued a policy to Jack Sparacio with a face value of $2,000, Mrs. Angello being the revocable beneficiary.

Jack Sparacio died on March 11, 1966. Mrs. Angello completed the necessary forms and filed a claim for the proceeds of the policy with the insurer. Metropolitan refused to pay the proceeds to Mrs. Angello because of the lien and levy served upon it by the United States.

Mrs. Angello then brought this action in the state court against Metropolitan seeking the proceeds. The United States intervened and upon its motion the case was removed to the Federal District Court. After removal Metropolitan paid the proceeds into the court registry and was dismissed from the case.

On August 5, 1968, the Director of Internal Revenue made an abatement of its previous assessment and is now claiming the amount of $3,902.94 on a theory of imputation of Mrs. Sparacio of one-half of the community income from her husband's business for the years in question.

Both Mrs. Angello and the government moved for summary judgment. The Court granted the government's motion and held Mrs. Angello indebted to the United States for $4,570.18 representing the income taxes due on her one-half of the community income for 1959 through 1961 computed on a separate return basis and interest accrued thereon through August 5, 1968. The federal tax lien was foreclosed against the interpleaded funds. This appeal followed.

The government contends that for federal income tax purposes a husband and wife domiciled in Louisiana, a community property state, are to be treated as separate taxpayers as to their respective portions of the commu-

nity income, and the tax liability for one-half of the community income is the wife's personal obligation and thus can be satisfied out of her separate property.

In *Anne Mitchell* v. *Commissioner*, 5 Cir. 1970, —— F. 2d ——, [No. 28, 163 ——], we held that under Louisiana law the wife's interest in the community is of such a character that she is not personally liable out of her separate property for income taxes due on community income because the liability for such taxes is a community obligation and does not become her separate obligation unless she expressly accepts such liability or accepts the benefits of the community upon its dissolution.[1] Thus *Mitchell* is dispositive of this issue.[2]

The only distinction between this case and *Mitchell* is that here the premiums for the policy were paid with community funds. But this is a distinction without a difference because the insurance proceeds are not community property but are the separate property of the wife under Louisiana law even though the insurance premiums were paid with community funds. *Newman* v. *Commissioner*, 5 Cir. 1935, 76 F. 2d 449. *Successions of George and Frances Clark*, 27 La. Ann. 269 (1875).

Since the obligation for income taxes was a community obligation, the separate property of the wife could not, in the circumstances of this case, be reached for its satisfaction. The judgment of the District Court is

Reversed.

SIMPSON, *Circuit Judge*, dissenting:

I respectfully dissent.

I agree with the majority that the issue raised on this appeal is governed by *Anne Goyne Mitchell* v. *Commis-*

[1] The government does not contend nor is there any mention in the record, that Mrs. Angello accepted the benefits of the community.

[2] We do not iterate the authorities undergoing our decision in *Mitchell*.

sioner of Internal Revenue, 5 Cir. 1970, —— F. 2d —— [No. 28,163, decided ——]. See my dissent in that case which is based on the holding of the Tax Court reported at 51 T.C. No. 62.

The issue involved in the present case was in my judgment correctly decided by the court below on the basis that under Louisiana law each spouse is liable for one-half of the federal income taxes related to community income. See the following cases: *Bender* v. *Pfaff*, 1930, 282 U.S. 127, 51 S. Ct. 64, 75 L. Ed. 252; *Commissioner of Internal Revenue* v. *Hyman*, 5 Cir. 1943, 135 F. 2d 49; *Smith* v. *Donnelly*, E.D. La. 1946, 65 F. Supp. 415; *Saenger* v. *Commissioner*, 5 Cir. 1934, 69 F. 2d 633.

I would affirm the judgment of the district court.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
NEW ORLEANS, LA.

OCTOBER TERM, 1969

No. 28154

D.C. Docket No. CA 66-884-A

MRS. FRANCES ANGELLO, WIDOW OF JACK SPARACIO,
PLAINTIFF-APPELLANT

v.

METROPOLITAN LIFE INSURANCE COMPANY,
DEFENDANT-APPELLEE

and

UNITED STATES OF AMERICA, INTERVENOR-APPELLEE

Appeal From the United States District Court
for the Eastern District of Louisiana

Before AINSWORTH, DYER and SIMPSON, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed.

It is further ordered that defendant-appellee and intervenor-appellee pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

SIMPSON, *Circuit Judge*, dissenting.
Issued as Mandate: June 22, 1970.

SUPREME COURT OF THE UNITED STATES

No. 798, October Term, 1970

UNITED STATES, ET AL., PETITIONERS

v.

ANNE GOYNE MITCHELL, ET AL.

ORDER ALLOWING CERTIORARI—Filed January 18, 1971

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

January 18, 1971

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